



भारत का राजपत्र The Gazette of India

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प्राधिकार से प्रकाशित
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सं. 42] नई दिल्ली, अक्टूबर 15—अक्टूबर 21, 2023, शनिवार/ आश्विन 23—आश्विन 29, 1945
No. 42] NEW DELHI, OCTOBER 15—OCTOBER 21, 2023, SATURDAY/ASVINA 23—ASVINA 29, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 18 अक्टूबर, 2023

का.आ. 1645.—केन्द्र सरकार, एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के केन्द्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड के अधीन, आयुक्त, सीमाशुल्क का कार्यालय, नया सीमाशुल्क सदन, कांडला- 370210 जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/3/2017- हिन्दी-II-अधिसूचना]

हिमबिंदु मुदुम्बई, संयुक्त सचिव (प्रशा.) सीबीआईसी

MINISTRY OF FINANCE**(Department of Revenue)**

New Delhi, the 18th October, 2023

S.O. 1645.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government, hereby notifies, Office of the Commissioner of Customs, New Customs house, Kandala- 370210, under Central Board of Indirect Taxes and Customs, Department of revenue where more than 80% staff has acquired the working knowledge of Hindi.

[F. No. E-11017/3/2017- Hindi-II-Notification]

HIMABINDU MUDUMBAL, Jt. Secy. (Ad.) CBIC

विदेश मन्त्रालय**(सी.पी.वी. प्रभाग)**

नई दिल्ली, 6 अक्टूबर, 2023

का.आ. 1646.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, वाशिंगटन में धर्मेंद्र सिंह और सैमी पाहुजा, सहायक अनुभाग अधिकारियों को दिनांक 06 अक्टूबर, 2023 से सहायक कौंसुलर अधिकारियों के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/1/2023(31)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-1)

MINISTRY OF EXTERNAL AFFAIRS**(CPV Division)**

New Delhi, the 6th October, 2023

S.O. 1646.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Mr. Dharmendra Singh and Ms. Sami Pahuja, both Assistant Section Officer in the Embassy of India, Washington, as Assistant Consular Officer to perform Consular services with effect from October 6, 2023.

[F. No.T.4330/01/2023(31)]

S.R.H FAHMI, Director (CPV-I)

नई दिल्ली, 6 अक्टूबर, 2023

का.आ. 1647.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारतीय उच्चायोग लिलोंगे मलावी में अंकित कुमार, सहायक अनुभाग अधिकारी को दिनांक 06 अक्टूबर 2023 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी.4330/1/2023(32)]

एस.आर.एच. फहमी निदेशक (सीपीवी-1)

New Delhi, the 6th October, 2023

S.O. 1647.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Mr. Ankit Kumar, Assistant Section Officer in the High Commission of India, Lilongwe, as Assistant Consular Officer to perform Consular services with effect from October 6, 2023.

[F. No.T. 4330/01/2023(32)]

S.R.H FAHMI, Director (CPV-I)

नई दिल्ली, 12 अक्टूबर, 2023

का.आ. 1648.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, नियामे में ओम प्रकाश, सहायक अनुभाग अधिकारी को दिनांक 12 अक्टूबर 2023 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/1/2023(33)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-1)

New Delhi, the 12th October, 2023

S.O. 1648.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Om Prakash, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Niamey to perform the Consular services with effect from October 12, 2023.

[F. No.T.4330/01/2023(33)]

S.R.H FAHMI, Director (CPV-I)

नागर विमानन मंत्रालय

नई दिल्ली, 29 सितम्बर, 2023

का.आ. 1649.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग), नियम, 1976 के नियम-10 के उप-नियम (4) के अनुसरण में, नागर विमानन मंत्रालय के अंतर्गत, नागर विमानन महानिदेशालय के उप निदेशक, उड़ान योग्यता का कार्यालय, गुवाहाटी, जिनमें 80 प्रतिशत कर्मिकों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

[फा. सं. ई. 11014/9/2015-रा.भा.]

पीयूष श्रीवास्तव, वरिष्ठ आर्थिक सलाहकार एवं अपर सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 29th September, 2023

S.O. 1649.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for the Official Purposes of the Union) Rules, 1976, the Central Government, hereby notifies the Deputy Director, Office of Air worthiness, Guwahati, subordinate office of the Directorate General of Civil Aviation, under Ministry of Civil Aviation, whereof 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11014/9/2015-OL]

PIYUSH SRIVASTAVA, Senior Economic Advisor & Addl. Secy.

नई दिल्ली, 12 अक्टूबर, 2023

का.आ. 1650.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग), नियम, 1976 के नियम-10 के उप-नियम (4) के अनुसरण में, नागर विमानन मंत्रालय के अंतर्गत, भारतीय विमानपत्तन प्राधिकरण के निम्नलिखित कार्यालयों, जिनमें 80 प्रतिशत कर्मिकों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

- 1 विमानपत्तन निदेशक का कार्यालय, भारतीय विमानपत्तन प्राधिकरण, केशोद हवाई अड्डा
- 2 भारतीय विमानपत्तन प्राधिकरण, कांडला विमानक्षेत्र, अंजार, कच्छ (गुजरात)
- 3 भारतीय विमानपत्तन प्राधिकरण, सूरत हवाई अड्डा, सूरत
- 4 विमानपत्तन निदेशक का कार्यालय, भारतीय विमानपत्तन प्राधिकरण, डोनी पोलो हवाई अड्डा, ईटानगर, अरुणाचल प्रदेश

[फा. सं. ई. 11014/9/2015-रा.भा.]

पीयूष श्रीवास्तव, वरिष्ठ आर्थिक सलाहकार एवं अपर सचिव

New Delhi, the 12th October, 2023

S.O. 1650.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for the Official Purposes of the Union) Rules, 1976, the Central Government, hereby notifies the following Offices of the Airports Authority of India, under Ministry of Civil Aviation, whereof 80% staff have acquired the working knowledge of Hindi.

- 1 Office of the Airport Director, Airports Authority of India, Keshod Airport
- 2 Airports Authority of India, Kandla Airport, Anjar, Kutch (Gujarat)
- 3 Airports Authority of India, Surat Airport, Surat
- 4 Office of the Airport Director, Airports Authority of India, Doni Polo Airport, Itanagar, Arunachal Pradesh

[F. No. E-11014/9/2015-OL]

PIYUSH SRIVASTAVA, Senior Economic Advisor & Addl. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1651.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, लखनऊ के पंचाट (पहचान संख्या 20/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/09/2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023-आई. आर. (सी.एम -II)]

मणिकंदन.एन, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th September, 2023

S.O. 1651.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 20/2020) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the Management of Food Corporation of India and their workmen, received by the Central Government on 13/09/2023.

[No. L-22013/01/2023-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM –LABOUR COURT, LUCKNOW

PRESENT
JUSTICE ANIL KUMAR
PRESIDING OFFICER

I.D. 20/2020

Ref. No.-D/830/AB/2020/22/IRDN dt. 03/9.09.2020

BETWEEN

1. Sri Fahim Ahmad S/o Sri Rahmat Khan
Village and Post Indepur Tehsil-Sadar,
District- Shahjahanpur (U.P.)
2. Sri Rajendra Saxena (Representative)
M/s Keshav Singh and Ors. T.P. No. 315, Katia Tolla,
Shahjahanpur (U.P.)

AND

1. The General Manager (Principal Employer)
FCI, Regional Office, TC/3 V, Vibhuti Khand, Gomti Nagar, Lucknow-226010
2. The Regional Manager (Appointing Authority)
FCI, District Office, Shahjahanpur (UP)

AWARD

By order No. D/830/AB/2020/22/IRDN dt. 03/9.09.2020 present industrial dispute has been referred for adjudication to this Tribunal dispute in exercise of the powers conferred by clause (d) of Sub- Section (1) and sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) by the Central Government, with following schedule:

“Whether the termination of the service of Sri Fahim S/o Shri Ramat Khan, who was engaged in Roja Depot of FCI, Shahjahanpur, (U.P.) by M/s Keshav Singh, Contractor of FCI for the period 08.08.2008 to 23.04.2010 is proper and justified.

If not, to what relief, the workman is entitled to?”

Accordingly an industrial dispute No. 20/2020 has been registered.

By an order 16.09.2022 last opportunity was granted to claimant to file written statement thereafter once again last opportunity was granted to file written statement failing which the matter should be proceeded for ex-parte hearing.

When the matter was taken up for hearing on 23.05.2023 neither claimant/authorize representative appeared on his behalf nor claim petition was filed.

Accordingly I have heard learned counsel for respondent and perused on record.

Taking into consideration the fact till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 03/9.09.2020

So in view of the said facts, as well as the law laid by the Hon’ble High Court in the case of V.K. Industries Vs. Labour Court (I) and others 1981 (29) FLR as under:-

“It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raised a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief”.

In the case of M/s Uptron powertronics Employees' Union, Ghaziabad through its Secretary V. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164 Hon'ble Allahabad High Court has held as under:-

"The law has been settled by the Apex Court in case of Shankar Chakravarti Vs Britannia Biscuit Co. Ltd., V.K. Raj Industries V. Labour Court and Ors., Airtech Private Limited Vs. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish and allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of District Administrative Committee U.P. P.A. C.C.S.C. Services V. Secretary-cum- G.M. District Co-Operative Bank Ltd. 2010 (126) FLR 519; wherein it has been held as under:-

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed".

As the workman had not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief:-

Lucknow

Justice ANIL KUMAR, Presiding Officer

Date: 11.07.2023

नई दिल्ली, 29 सितम्बर, 2023

का. आ. 1652.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, आसनसोल के पंचाट (एल.सी.आवेदन संख्या 02/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/09/2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023-आई. आर. (सी.एम-II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 29th September, 2023

S.O. 1652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (L.C.Application No. 02/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 21/09/2023.

[No. L-22013/01/2023 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

L. C. APPLICATION NO. 02 OF 2013

PARTIES: Khakru Bhuia

Vs.

- (i) Agent, Naba Kajora Colliery, ECL
(ii) General Manager, Kajora Area, ECL.

REPRESENTATIVES:

For the Union/Workman: Mr. Khakru Bhuia (in person).

For the Management: Mr. P. K. Das, learned advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 18.07.2023

AWARD

1. Instant application under section 33 C (2) of the Industrial Disputes Act, 1947 was filed by Khakru Bhuia, ex-employee of M/s. Eastern Coalfields Limited, praying for payment of dues in respect of wages, Quarterly Bonus, PPLB, Earned Leave wages, and Interest to him amounting to Rs.3,25,332.20/- (Rupees three lakh twenty-five thousand three hundred thirty-two and twenty paise only) for the period from 01.03.2007 to 30.06.2008.

2. Mr. P. K. Das, learned advocate for Eastern Coalfields Limited / opposite party is present accompanied by Mr. Ramjee Tripathi, representative of the management. On call at 01:25 PM none appears for Khakru Bhuia. Mr. Das has filed a Memorandum of Settlement in Form-H dated 30.05.2023 in respect of the claims made by their ex-employee i.e. Khakru Bhuia, enclosing a photocopy of a document of State Bank of India which shows that Rs.74,989.42/- has been transferred in favour of Khakru Bhuia on 01.06.2023.

3. The applicant in his application under Section 33 C (2) contended that he had performed his duty without any break till his superannuation on 30.06.2008. However, the applicant has not been paid his wages and other benefits from 01.03.2007 to 30.06.2008 for sixteen months and he is entitled to wages of Rs.1,86,227.20/-, Quarterly Bonus of Rs.40,165/-, PPLB of Rs.15,000/-, Earn Leave wages of Rs.14,000/-, and Interest of Rs.70,000/-. The total claim in this case is of Rs.3,25,332.20/-.

4. The Agent, Naba Kajora Colliery of Eastern Coalfields Limited filed a written statement on 30.03.2015 contending that non-payment of wages does not come under purview of Section 33 C (2) of the Industrial Disputes Act, 1947 and the opposite party is not liable to pay any wages. The case was taken up for evidence of Khakru Bhuia. Khakru Bhuia has been examined as workman witness - 1. The main contention of management is that the Date of Birth of the applicant is mentioned as 01.07.1947, as such he attained his superannuation on 30.06.2007.

5. The management did not adduce any evidence to dislodge the claim that the workman did not perform his duty till 30.06.2008. In course of time, a Memorandum of Settlement in Form-H dated 30.05.2023 has been filed and the payable dues was settled at Rs.74,989.42/-. Further condition in the settlement is that neither party shall raise any dispute before any Forum / Court of Law regarding the issue of wages for working beyond the date of superannuation or any other service benefit arising out of the said settlement and that Khakru Bhuia shall not demand any consequential payment arising out of payment of wages like difference of gratuity, CMPF, Pension and Earned Leave encashment. It has also been agreed that the payment would be made by the management within fifteen days of signing of the agreement. In accordance with such agreement, the management of the opposite party made a transfer of Rs. 74,989.42/- in favour of petitioner on 01.06.2023. The L.C. Application under section 33 C (2) of the Industrial Disputes Act, 1947 is accordingly disposed of in favour of the petitioner. The Memorandum of Settlement dated 30.05.2023 in two pages is made a part of this Award.

Hence,

ORDERED

that the L. C. Application filed under section 33 C (2) of the Industrial Disputes Act, 1947 is disposed of in favour of the petitioner in terms of settlement dated 30.05.2023, treating the Memorandum of Settlement in Form-H as part of the Award. Copies of the Award in duplicate be sent to the Ministry of Labour, Govt. of India, New Delhi under section 33 C (4) of Industrial Dispute Act, 1947 for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 5 अक्टूबर, 2023

का.आ. 1653.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 68/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/09/2023 को प्राप्त हुआ था।

[सं. एल-22012/589/99-आई. आर. (सी.एम-II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 5th October, 2023

S.O. 1653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ((Ref. No. 68/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 21/09/2023.

[No. L-22012/589/99 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 68 OF 2000

PARTIES: N. B. Roy

Vs.

Management of Ratibati Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Sayantan Mukherjee, Adv.

For the Management of ECL: Mr. P. K. Das, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 13.09.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/589/99/IR(CM-II)** dated 06/21.07.2000 has been pleased to refer the following dispute between the employer, that is the Management of Ratibati Colliery under Satgram-Sripur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Ratibati Colliery under ECL in denying the payment of wages in lieu of unavailed accumulated earned leave particularly while the leave application was refused / recorded by the management prior to retirement is legal, valid and justified? If not, to what relief Sh. N. B. Roy, Assistant Foreman is entitled? ”

1. On receiving Order **No. L-22012/589/99/IR(CM-II)** dated 06/21.07.2000 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 68 of 2000** was registered on 07.08.2000 / 18.10.2001 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate for the management of Eastern Coalfields Limited and Mr. Sayantan Mukherjee, learned advocate for N. B. Roy, aggrieved workman are present. The case is fixed up today for appearance of Mr. Sandip Kumar Saha, Agent, Satgram-Ratibati Group of Mines, ECL and for filing of Memorandum of Settlement. Prasanta Roy, son of N. B. Roy is present. A Memorandum of Settlement is filed by management of ECL in Form ‘H’ duly executed by Mr. Sandip Kumar Saha, Agent, Satgram-Ratibati Group of Mines, ECL on behalf of the management and Mr. N. B. Roy, aggrieved workman who put his Left Thumb Impression identified by his son. Dispute between parties is resolved on the basis of the Memorandum of Settlement, wherein it is stated that the

company has paid Rs. 22,507.31/- (Rupees twenty-two thousand five hundred seven and thirty-one paise only) to Mr. N. B. Roy, Ex-Asst. Foreman of Ratibati Colliery against his unavailed Earned Leave dues for sixty-seven days. In view of the settlement reached, the Industrial Dispute is disposed of in terms of the Memorandum of Settlement dated 13.09.2023. Let an Award be passed in favour of workman treating the Memorandum of Settlement in one (1) page as part of the Award. Attendance of Mr. Sandip Kumar Saha is dispensed with.

Hence,

ORDERED

that the Industrial Dispute is disposed of in favour of the workman in terms of the Memorandum of Settlement dated 13.09.2023 in Form 'H', treating the same as a part of the Award. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1654.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑयल एंड नेचुरल गैस कॉर्पोरेशन लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई, पंचाट (रिफरेन्स न.-35/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-30011/85/2006-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1654.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 35/2007**) of the **Central Government Industrial Tribunal cum Labour Court-1, Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Oil and Natural Gas Corporation Limited** and **Their Workmen** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-30011/85/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE KESANG DOMA BHUTIA

Presiding Officer

REFERENCE NO. CGIT-1/35 of 2007

Parties: Employers in relation to the management of
Oil and Natural Gas Corporation Ltd.
And
Their workmen

Appearances:

For the first party Management : Absent.

For the second party workmen : Absent.

Dated the 23rd day of August, 2023.

AWARD

Both the parties are found absent when the matter is called.

As per record, today has been fixed for evidence from the side of the union. On perusal of the record, it is seen that since 25.09.2014 union which has espoused the present dispute has not been taking any step or pursuing with the present reference case. Though in the record, I find the union has filed claim statement and management has also filed its written statement way back in the year 2008 and 2012 respectively. Therefore, a presumption can be drawn that both the sides are aware of the pendency of the present reference case. Therefore, non appearance on both the sides for more than 9 years, a presumption can be drawn either union is no more interested to pursue the dispute espoused against the employer or dispute might had been settled between union and the management.

However, by order No. L-30011/85/2006 (IR(M)) dated 16.07.2007, the Central Government, Ministry of Labour in exercise of the power conferred under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 has referred the following issues to this Tribunal for adjudication.

“1. Whether, the provisions of ID Act, 1947 and other various labour laws of this country are applicable to ‘Offshore Employees’ engaged in ‘Bombay High’ beyond 12 nautical miles? 2. Whether, there is change in service conditions as per Section 9-A of ID Act, 1947 i.r.o. ‘Tenure Based Employees’ in view of co-joint reading of Schemes circulated vide Memo No. MRBC/RECTT/3480/2001 dated 15/11/2001 and Scheme circulated vide Memo No. MR/MH/FO(TB)/ELECT-1/2005 dated 29/1/2005 by the ONGC Ltd. Mumbai Region? 3. Whether the demand of the union for regularization of these ‘Tenure Based Employees’ at par with regular workmen is proper, legal and justified? If so, to what relief the workmen are entitled to and from which date?”

In the record, apart from the pleadings of the parties, there is neither oral or documentary evidence to substantiate the claim made by the union or defence taken by the management. Infact, nothing is there to prove the issue under reference save and accept the un-corroborated pleadings of the parties.

In view of above discussion, no dispute award is hereby passed.

Accordingly, reference case No. CGIT- 35 of 2007 is disposed of.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1655.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और भावनगर डीवीएन. बीमा कर्मचारी संघ के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद, पंचाट (रिफरेन्स न.-31/2006) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/5/2005-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1655.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 31/2006) of the **Central Government Industrial Tribunal cum Labour Court, Ahmedabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Bhavnagar Dvn. Insurances Workers Association** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/5/2005-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD

Present....

Sunil Kumar Singh-I,
 Presiding Officer, CGIT cum Labour Court,
 Ahmedabad,

Dated 13th September, 2023

Reference: (CGITA) No- 31/2006

The Divisional Manager,

LIC of India,

Neelam Park,

BHAVNAGAR(GUJARAT)

.....First Party/Employer

V

The General Secretary,

Bhavnagar Dvn. Insurances Workers Association,

LIC of India, Neelam Park,

BHAVNAGAR(GUJARAT)

.....Second Party/Workmen

Adv. for the First Party employer : Shri K. V. Gadhia & Shri M. K. Patel

Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17011/5/2005-IR(M) dated 28.02.2006 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Divisional Manager, LIC of India, Bhavnagar in imposing the penalty of reduction in the lower stage in time scale by two stages on Shri R. G. Ramani, Assistant justified? If not, to what relief the concerned workman is entitled?”

1. The matter was taken up today. First Party/employer is represented through Shri K. V. Gadhia and Shri M. K. Patel Advocates. None responded for Second Party workmen/union. The reference dates back to 28.02.2006. Second Party workman sought time on 03.07.2019. Thereafter he has not been turning up for leading evidence despite giving several opportunities. The second party workman/union was afforded last opportunity on 18.01.2023, but for no avail. It appears that the Second Party workman is not interested to proceed further in the matter.
2. The workman has neither appeared nor filed any documentary evidence to substantiate his claim under reference. Hence the claim under reference stands dismissed for want of evidence.
3. The reference is thus answered accordingly against the workman.

Let two copies of the Award be sent to the Appropriate Government for the needful and for publication U/s 17(1) of the Industrial Disputes Act, 1947.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1656.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स ओएनजीसी लिमिटेड; ओएनजीसी लिमिटेड; मेसर्स जे. जे. रावल; जे.बी. बरोट; मेसर्स सन ट्रेवल्स; मेसर्स के.आर.देसाई; मेसर्स एच. आर. चौधरी; मेसर्स जनक ट्रांसपोर्ट कंपनी; मेसर्स विनोद ट्रांसपोर्ट; मेसर्स चौधरी ट्रांसपोर्ट कंपनी; मेसर्स गुरु कृपा ट्रेवल एजेंसी; मेसर्स हरिसिद्धि ट्रांसपोर्ट; मेसर्स एस. आर. चौधरी; मेसर्स सन ट्रांसपोर्ट; मेसर्स लैंड लोस्सेर को-ऑपरेटिव सोसाइटी; मेसर्स देव ऑयल फील्ड सर्विस; मेसर्स ईश्वरभाई एस. चौधरी; मेसर्स दिग्विजय एंटरप्राइज; मेसर्स तपस्वी ट्रांसपोर्ट एवं मेसर्स सुरेश तेल क्षेत्र इकाई और रखरखाव के प्रबंधन के संबद्ध नियोजकों और ग्लोरियस पेट्रोलियम मजदूर संघ के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद, पंचाट (रिफरेन्स नं.-183/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-30011/19/2018-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1656.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 183/2018**) of the **Central Government Industrial Tribunal cum Labour Court, Ahmedabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s. ONGC Ltd.; ONGC Ltd., M/s. J. J. Raval; M/s. J. B. Barot; M/s. Sun Travels; M/s. K. R. Desai; M/s. H. R. Chaudhary; M/s. Janak Transport Company; M/s. Vinod Transport; M/s. Chaudhary Transport company; M/s. Guru Krupa Travel Agency; M/s. Harisidhhi Transport; M/s. S. R. Chaudhary; M/s. Sun Transport; M/s. Land Losser Co-operative Society; M/s. Dev Oil Field Service; M/s. Ishwarbhai S. Chaudhary; M/s. Digvijay Enterprise; M/s. Tapasvi Transport & M/s. Suresh Oil Field Unit and Maintenance and Glorious Petroleum Mazdoor Sangh which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-30011/19/2018-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 11th September, 2023

Reference: (CGITA) No- 183/2018

1. The Executive Director-Asset Manager,

M/s. ONGC Ltd., KDM Bhavan,

Palavasna,

Mehsana(Gujarat)

2. The Head of Logistics, Near Workshop,

ONGC Ltd.,

Mehsana(Gujarat)

3. M/s. J. J. Raval,
Near Vijay Guest House, Highway,
Mehsana (Gujarat).
4. M/s. J. B. Barot,
Nr. Dudh Sagar Dairy,
Jail Road, Mehshana (Gujarat)
5. M/s. Sun Travels,
45, Umiya Shopping Center,
Highway, Mehshana (Gujarat)
6. M/s. K. R. Desai,
Near Vijay Guest House, Highway,
Mehshana (Gujarat).
7. M/s. H. R. Chaudhary,
6, Shankar Nagar Society,
Nr. Dudh Sagar Dairy,
Mehshana (Gujarat)
8. M/s. Janak Transport Company,
Near Simandhar Flat,
Near Pasabhai Petrol Pump,
Highway, Mehshana (Gujarat)
9. M/s. Vinod Transport,
19, Prakukh Enclave,
Near Star Line Care,
Nagalpur, Highway,
Mehshana (Gujarat)
10. M/s. Chaudhary Transport Company,
Arbuda Complex, Near Gurudwara,
Jail Road, Mehshana (Gujarat)
11. M/s. Guru Krupa Travel Agency,
1, Hira Laxmi Chambers,
Dairy Road, Mehshana (Gujarat)
12. M/s. Harisidhhi Transport,
Near Nagalpur College,
Highway, Mehshana (Gujarat)
13. M/s. S. R. Chaudhary,
54, Urmi Shopping Centre,
Near B. K. Cinema,
Highway, Mehshana (Gujarat)
14. M/s. Sun Transport,
54, Urmi Shopping Centre,
Near B. K. Cinema,

- Highway, Mehsana (Gujarat)
15. M/s. Land Losser Co-operative Society,
Mehsana (Gujarat)
 16. M/s. Dev Oil Field Service,
Plot No.2, Near Nagalpur College,
Highway, Mehsana (Gujarat)
 17. M/s. Ishwarbhai S. Chaudhary,
Swagat Plaza, Near Good Luck Highway,
Mehsana (Gujarat)
 18. M/s. Digvijay Enterprise,
Haduva Village,
Near Sobhasan, Post Sobhasan,
Mehsana (Gujarat)
 19. M/s. Tapasvi Transport,
Umiya Shopping Centre,
B Division, Mehsana (Gujarat)
 20. M/s. Suresh Oil Field Unit and Maintenance,
Near Mahendra Show Room,
Near Janpath Hotel,
Mehsana (Gujarat)
-First Parties/Employer

V

The General Secretary,
Glorious Petroleum Mazdoor Sangh,
A/3, Priya Darshini Society,
Near Railway Colony, Sabarmati,
Ahmedabad (GUJARAT)-380 019

.....Second Party/Workmen

Adv. for the First Party employer : Shri K. V. Gadhia & Shri M. K. Patel

Adv. for the Second Party workmen : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/19/2018-IR(M) dated 06.12.2018 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of General Secretary, Glorious Petroleum Mazdoor Sangh, Ahmedabad to give job security to the list of workers(The list of 269 workers enclosed) engaged through contractor under ONGC Ltd., Mehsana is legal, fair and justified? If yes, what relief the workmen are entitled to and from which date? What other directions are necessary in the matter?”

1. The matter was taken up today. First Party/employer is represented through Shri K. V. Gadhia and Shri M. K. Patel Advocates. None responded for Second Party/Workmen’s union. The reference dates back to 06.12.2018. Second Party/workman has service vide acknowledgement Ex.11 and sought time on 20.05.2019. Thereafter he has not been turning up for filing statement of claim despite giving several opportunities. The second party/workmen’s union was afforded last opportunity on 18.11.2022 and another opportunity on 03.05.2023 to appear and file his statement of claim. It appears that the Second Party/workmen’s union is not interested to proceed further in the matter.

2. The workmen's union has neither filed statement of claim nor any evidence to substantiate the claim under reference. Hence the claim under reference stands dismissed for want of evidence.
3. The reference is thus answered accordingly against the workmen.

Let two copies of the Award be sent to the Appropriate Government for the needful and for publication U/s 17(1) of the Industrial Disputes Act, 1947.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1657.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबंध में नियोजकों और श्री एन. चंती बोली रामय्या के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-91/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल -17012/11/2014- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1657.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 91/2014**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Sri N. Chanti Boli Ramayya** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17012/11/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR

Presiding Officer

Dated the 21st day of August, 2023

INDUSTRIAL DISPUTE No. 91/2014

Between:

Sri N. Chanti Boli Ramayya

S/o Vishnu Prasad,

Komarajunlanka,

Ravulapalem,

E.G. Dist – 533238.

.....Petitioner

AND

The Sr. Divisional Manager,

LIC of India, Divisional Office,

Jeevan Godavari, Morampudi,

Rajahmundry.

... Respondent

Appearances:

For the Petitioner : Sri V.V. Rama Krishna, Advocate

For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 11/2014-IR(M) dated 12.5.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

“Whether the removal from service of Sri N. Chanti Boli Ramayya, Ex.Temp. Class –IV, LIC of India, Ravulapalem Branch w.e.f. 28.1.2013 is legal and justified? If not, what other relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 91/2014 and notices were issued to the parties concerned and the Petitioner entered appearance.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Respondent present. Record reveals that Petitioner is not appearing in this case since September, 2016. It seems that Petitioner is not interested to pursue his case. In spite of providing sufficient opportunity, Petitioner did not choose to file claim statement. Hence, a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 21st day of August, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Petitioner

NIL

Witnesses examined for the

Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1658.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिव्य सिलिका माइंस एवं मिनरल्स; मेसर्स साई बाबा सिलिका माइंस के प्रबंधन के संबद्ध नियोजकों और श्री एन. प्रभाकर के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-6/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. जेड-16025/04/2023- आईआर(एम)-63]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1658.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 6/2016**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Divya Silica**

Mines & Minerals; M/s Sai Baba Silica Mines and Sri N. Prabhakar which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. Z-16025/04/2023-IR(M)-63]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: - Sri IRFAN QAMAR

Presiding Officer

Dated the 23rd day of August, 2023

INDUSTRIAL DISPUTE LC No. 6/2016

Between:

Sri N. Prabhakar,

S/o Penchalaiah,

R/o Chintavaram Village,

Ballavolu Post, Chillakuru Mandal,

S.P.S.R. Nellore District,

Andhra Pradesh.

.....Petitioner

AND

1. Sri Aruru Srinivasa Achary @

Divya Sennaiah,

Divya Silica Mines & Minerals,

Chintavaram Village,

Chillakuru Mandal,

SPSR Nellore District, Andhra Pradesh.

2. Manager,

M/s Sai Baba Silica Mines,

Vellapalem Gram Panchayat & Village,

Chillakuru Mandal, SPSR Nellore District,

Andhra Pradesh

... Respondents

Appearances:

For the Petitioner : Sri D. Kasim Saheb, Advocate

For the Respondent: M/s. Ch. Indra Sena Reddy, A. Narasimha & M. Ramadevi, Advocates

AWARD

Sri N. Prabhakar who worked as Clerk (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Divya Silica Mines & Minerals, seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. Respondent did not file counter. Despite sufficient number of opportunities have been provided to him Petitioner is not putting his presence since 2019 and also not adduced evidence. It thus becomes crystal clear that the petitioner seems to be not interested in pursuing his case and as such Petitioner's case is dismissed. As such, a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 23rd day of August, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1659.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिव्य सिलिका माइंस एवं मिनरल्स; मेसर्स साई बाबा सिलिका माइंस के प्रबंधन के संबद्ध नियोजकों और श्री टी. पोलैया के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-5/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. जेड -16025/04/2023- आईआर(एम)-64]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1659.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 5/2016) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Divya Silica Mines & Minerals; M/s Sai Baba Silica Mines** and **Sri T. Polaiah** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. Z-16025/04/2023-IR(M)-64]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 23rd day of August, 2023

INDUSTRIAL DISPUTE LC No. 5/2016

Between:

Sri T. Polaiah,

S/o Bhaskar,

R/o Turpu Kanupuru Village,
Ballavolu Post, Chillakuru Mandal,
S.P.S.R. Nellore District,
Andhra Pradesh.

.....Petitioner

AND

1. Sri Aruru Srinivasa Achary @

Divya Sennaiah,
Divya Silica Mines & Minerals,
Chintavaram Village,
Chillakuru Mandal,
SPSR Nellore District, Andhra Pradesh.

2. Manager,

M/s Sai Baba Silica Mines,
Vellapalem Gram Panchayat & Village,
Chillakuru Mandal, SPSR Nellore District,
Andhra Pradesh

... Respondents

Appearances:

For the Petitioner : Sri D. Kasim Saheb, Advocate

For the Respondent: M/s. Ch. Indra Sena Reddy, A. Narasimha & M. Ramadevi, Advocates

AWARD

Sri T. Polaiah who worked as Clerk (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Divya Silica Mines & Minerals, seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. Respondent did not file counter. Despite sufficient number of opportunities have been provided to him Petitioner is not putting his presence since 2019 and also not adduced evidence. It thus becomes crystal clear that the petitioner seems to be not interested in pursuing his case and as such Petitioner's case is dismissed. As such, a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 23rd day of August, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1660.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिव्य सिलिका माइंस एवं मिनेरल्स; मेसर्स गायत्री सिलिका माइंस के प्रबंधन के संबद्ध नियोजकों और श्री टी. पुट्टैया के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-4/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. जेड -16025/04/2023- आईआर(एम)-65]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1660.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 4/2016**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Divya Silica Mines & Minerals; M/s Gayatri Silica Mines** and **Sri T. Puttaiah** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. Z-16025/04/2023-IR(M)-65]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR

Presiding Officer

Dated the 23rd day of August, 2023

INDUSTRIAL DISPUTE LC No. 4/2016

Between:

Sri T. Puttaiah,

S/o Lakshmaiah,

R/o Yeruru Village & Post,

Chillakuru Mandal,

S.P.S.R. Nellore District. Andhra Pradesh.

.....Petitioner

AND

1. Sri Aruru Srinivasa Achary @

Divya Sennaiah

Divya Silica Mines & Minerals,

Chintavaram Village,

Chillakuru Mandal,

SPSR Nellore District, Andhra Pradesh.

2. Manager,

M/s. Gayatri Silica Mines,

Toorpu Kanupur Gram Panchayat & Village,

Chillakuru Mandal, SPSR Nellore District.A.P.

... Respondents

Appearances:

For the Petitioner : Sri D. Kasim Saheb, Advocate

For the Respondent: M/s. Ch. Indra Sena Reddy, A. Narasimha & M. Ramadevi, Advocate

AWARD

Sri T. Puttaiah who worked as Clerk (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Divya Silica Mines & Minerals, seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deem fit.

2. Respondent did not file counter. Despite sufficient number of opportunities have been provided to him Petitioner is not putting his presence since 2019. It thus becomes crystal clear that the petitioner seems to be not interested in pursuing his case and as such Petitioner's case is dismissed as not pressed. As such, a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 23rd day of August, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1661.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-11/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/14/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1661.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 11/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India and Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/14/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: Sri IRFAN QAMAR
Presiding Officer

Dated the 18th day of September, 2023

INDUSTRIAL DISPUTE No. 11/2013

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.
Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India,
Divisional Office,
Near Lord Satyannarayana Swamy Temple,
Kavali – 524201. Nellore Dist. AP

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/14/2012-IR(M) dated 20/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri P. Ch. Siddalingeswar, M. Masthan Babu, G. Mallikarjun, A. Subrahmanyam and K. Niranjana as Peons in the LIC of India, Kavali, Nellore District, is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 11/2013 and notices were issued to the parties concerned.

2. **The averments made in the claim statement are as follows:**

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon'ble Supreme Court of India has passed an order on 18th January,

2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon'ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. **Respondent filed counter denying the averments of the Petitioner as under:**

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with

the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.270/- per day in C-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC (Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC

No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon'ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon'ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon'ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon'ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID Five persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) P.Ch. Siddalingeswar—Presently working in Kavali Branch Office
- (ii) M. Masthan Babu - Presently working in Kavali Branch Office
- (iii) G. Mallikarjun - Presently working in Kavali Branch Office
- (iv) A. Subrahmanyam - Presently working in Kavali Branch Office
- (v) K. Niranjana - Presently working in Kavali Branch Office

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the

Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri P.Ch. Siddalingeswar as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri C. Madhusudhan as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?

2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and

this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No. 953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, “I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case.” In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, “No appointment is given to me

pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work.” Further, witness WW1 states that, “Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher.” Workmen claim that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon’ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has no where stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, “he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other’s name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other’s name or dummy name. No single piece of evidence is adduced by Petitioner workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon’ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon’ble Apex Court have held.

“22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen

in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*"The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**", as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019."*

In view of the law laid down by Hon'ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon'ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon'ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri P. Ch. Siddalingeswar, M. Masthan Babu, G. Mallikarjun, A. Subrahmanyam and K. Niranjana as Peons in the LIC of India, Kavali, Nellore District, is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

WW1: Sri P.Ch. Siddalingeswar

MW1: Sri C. Madhusudhan

Documents marked for the Petitioner

Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012

Ex.W2: Photostat copy of minutes of enquiry of ALC(C)

Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012

Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012

Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013

Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012

Ex.W7: Photostat copy of Order of Hon'ble Supreme Court of India in C. A No.953-968/2005

Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011

Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015

Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
Ex.W11: Photostat copy of Lr. No.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1662.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-9/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/18/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1662.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 9/2013) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/18/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

**Present: Sri IRFAN QAMAR
Presiding Officer**

Dated the 18th day of September 2023

INDUSTRIAL DISPUTE No. 9/2013

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.
Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India,
Divisional Office,
City Branch-II, Laxshmipuram,
Guntur – 522007.

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate
For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/18/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri B. Rambabu, B. Joseph Stalin, T. Adishesu Sharma, Shaik. Subani, K. Praveen Kumar, D. Ravi Kumar, P. Kanaka Raju, P. Sada Siva Rao and G. Bala Krishnaiah as Peons in the LIC of India, Guntur Branch Office, is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 9/2013 and notices were issued to the parties concerned.

2. **The averments made in the claim statement are as follows:**

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon'ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon'ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. **Respondent filed counter denying the averments of the Petitioner as under:**

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be

dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.257/- per day in B-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC

(Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon'ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon'ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon'ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the

Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon.ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID nine persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) B. Ram Babu – Not working
- (ii) B. Joseph Stalin – Not working
- (iii) T. Adishesu Sarma – Presently working at Guntur (699) branch
- (iv) Shaik Subjani-Not working
- (v) K. Praveen Kumar-Not working
- (vi) D. Ravi Kumar-Presently working at Guntur (699) branch
- (vii) P. Kanaka Raju- Not working
- (viii) P. Sadasiva Rao-Not working
- (ix) G. Bala Krishnaiah- Presently working at Guntur (699) branch

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri Dasari Ravi Kumar as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri G. Srinivasa Rao as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?
2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of

workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs

who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, "I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case." In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, "No appointment is given to me pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work." Further, witness WW1 states that, "Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher." Workmen claim that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon'ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has nowhere stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, "he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other's name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other's name or dummy name. No single piece of evidence is adduced by Petitioner

workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon'ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon'ble Apex Court have held,

"22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*"The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**', as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019."*

In view of the law laid down by Hon'ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon'ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon'ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri B. Rambabu, B. Joseph Stalin, T. Adishesu Sharma, Shaik. Subani, K. Praveen Kumar, D. Ravi Kumar, P. Kanaka Raju, P. Sada Siva Rao and G. Bala Krishnaiah as Peons in the LIC of India, Guntur Branch Office, is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 18th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Dasari Ravi Kumar	MW1: Sri G. Srinivasa Rao

Documents marked for the Petitioner

Ex.W1:	Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
Ex.W2:	Photostat copy of minutes of enquiry of ALC(C)
Ex.W3:	Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
Ex.W4:	Photostat copy of CBI enquiry report dt. 3.5.2012
Ex.W5:	Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
Ex.W6:	Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
Ex.W7:	Photostat copy of Order of Hon'ble Supreme Court of India in C. A No.953-968/2005
Ex.W8:	Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
Ex.W9:	Photostat copy of memorandum of M/o Finance dt. 11.9.2015
Ex.W10:	Photostat copy of LIC of India counter affidavit in CC 951/2011.
Ex.W11:	Photostat copy of Lr. No.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1663.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबंधित नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेंस न.-10/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/13/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1663.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 10/2013) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/13/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

Present: **Sri IRFAN QAMAR**
 Presiding Officer

Dated the 18th day of September 2023

INDUSTRIAL DISPUTE No. 10/2013

Between:

The General Secretary,
 Insurance Employees Union,
 7-530, Godugupet,
 Turlapati Vari Street,
 Machilipatnam – 521001.
 Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
 LIC of India,
 Divisional Office,
 Batchupet, Machilipatnam-521001.
 Krishna Dist. AP

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/13/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri K. Manikumar, L. Naga Babu, J. Srinivasa Rao, P.Suresh, K. Raghava Rao, V. Srinu and V. Shiva Kumar as Peons in the LIC of India, Machilipatnam Divisional Office, is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 10/2013 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities

dated 13th April, 2009 and 10th July, 2010. Hon'ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon'ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. Respondent filed counter denying the averments of the Petitioner as under:

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with

the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.257/- per day in B-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC (Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC

No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon'ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon'ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon'ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon'ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID Six persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) K. Mani Kumar –Presently working at Divl.Office, Machilipatnam
- (ii) J. Srinivasa Rao- Presently working at Divl.Office, Machilipatnam
- (iii) Peteti Suresh - Presently working at Divl.Office, Machilipatnam
- (iv) V. Raghava Rao- Presently working at Divl.Office, Machilipatnam
- (v) V. Srinvu- Presently working at Divl.Office, Machilipatnam
- (vi) L. Naga Babu - Presently working at Divl.Office, Machilipatnam

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the

Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri K. Mani Kumar as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri G. Srinivasa Rao as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?
2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the

daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, “I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case.” In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, “No appointment is given to me

pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work.” Further, witness WW1 states that, “Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher.” Workmen claim that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon’ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has no where stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, “he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other’s name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other’s name or dummy name. No single piece of evidence is adduced by Petitioner workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon’ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon’ble Apex Court have held,

“22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious

discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*"The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**", as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019."*

In view of the law laid down by Hon'ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon'ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon'ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri K. Manikumar, L. Naga Babu, J. Srinivasa Rao, P.Suresh, K. Raghava Rao, V. Srinu and V. Shiva Kumar as Peons in the LIC of India, Machilipatnam Divisional Office, is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

WW1: Sri K. Mani Kumar

MW1: Sri G. Srinivasa Rao

Documents marked for the Petitioner

Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
 Ex.W2: Photostat copy of minutes of enquiry of ALC(C)
 Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
 Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012
 Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
 Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
 Ex.W7: Photostat copy of Order of Hon'ble Supreme Court of India in C. A No.953-968/2005
 Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
 Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015
 Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
 Ex.W11: Photostat copy of Lr. No. SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1664.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-7/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/19/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1664.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 7/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/19/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri IRFAN QAMAR
Presiding Officer

Dated the 18th day of September, 2023

INDUSTRIAL DISPUTE No. 7/2013

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.
Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India,
Branch Office,
Thotalavallur Road,
Vuyyur – 521165.
Krishna District. A.P.

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit , Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/19/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri G. Mahesh Babu, V. Ashok, A. Ramesh and P. Mohana Varma as Peons in the LIC of India, Vuyyur Branch Office, is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 7/2013 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon'ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon'ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. **Respondent filed counter denying the averments of the Petitioner as under:**

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.257/- per day in B-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli

workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC (Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon.ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon.ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon.ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL

No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon.ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID four persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) G. Mahesh Babu – Not working since November, 2013 as new permanent employee joined.
- (ii) Valle Ashok- Presently working at Vuyyuru branch
- (iii) A.Ramesh– Presently working at Vuyyuru branch
- (iv) P. Mohan Varma- Not working at present

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri Valle Ashok as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri G. Srinivasa Rao as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

- 1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?
- 2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were

prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination,

resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, "I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case." In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, "No appointment is given to me pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work." Further, witness WW1 states that, "Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher." Workmen claim that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon'ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has no where stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, "he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other's name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other's name or dummy name. No single piece of evidence is adduced by Petitioner

workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon'ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon'ble Apex Court have held,

“22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.”

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*“The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**’, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.”*

In view of the law laid down by Hon'ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon'ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon'ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri G. Mahesh Babu, V. Ashok, A. Ramesh and P. Mohana Varma as Peons in the LIC of India, Vuyyur Branch Office, is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 18th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Petitioner

WW1: Sri Valle Ashok

Witnesses examined for the

Respondent

MW1: Sri G. Srinivasa Rao

Documents marked for the Petitioner

- Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
 Ex.W2: Photostat copy of minutes of enquiry of ALC(C)
 Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
 Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012
 Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
 Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
 Ex.W7: Photostat copy of Order of Hon'ble Supreme Court of India in C. A No.953-968/2005
 Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
 Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015
 Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
 Ex.W11: Photostat copy of Lr. No.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1665.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-8/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल -17011/16/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1665.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 8/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/16/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD****Present: Sri IRFAN QAMAR
Presiding Officer**Dated the 18th day of September, 2023**INDUSTRIAL DISPUTE No. 8/2013**

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.
Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India,
Divisional Office,
City Branch-III, Swarna Lok Complex,
Eluru Road, Vijayawada -520002.

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/16/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri K. Sudhir Kumar, M. Naga Raju, S. Vijay Kanth and M. Madhu Babu as Peons in the LIC of India, Vijayawada Branch Office, is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 8/2013 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon’ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon’ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court

dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. **Respondent filed counter denying the averments of the Petitioner as under:**

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener,

Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.257/- per day in B-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC (Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for

more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon'ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon'ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon'ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon'ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID Four persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) K. Sudheer Kumar—Presently working in Vijayawada (730) Branch
- (ii) M. Nagaraju- Presently working in Vijayawada (730) Branch
- (iii) S. Vijaya Kanth- Not working since 1.7.2013. He was used as water boy during summer
- (iv) V. Madhu Babu - Presently working in Vijayawada (730) Branch

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri S. Vijay Kanth as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri G. Srinivasa Rao as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?

2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, “I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case.” In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, “No appointment is given to me pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work.” Further, witness WW1 states that, “Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher.” Workmen claim that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon'ble Apex Court, but they have

not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wagger whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has no where stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wagger. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, "he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other's name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wagger and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other's name or dummy name. No single piece of evidence is adduced by Petitioner workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wagger in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon'ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon'ble Apex Court have held,

"22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wagger, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*“The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**’, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.”*

In view of the law laid down by Hon’ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon’ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon’ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri K. Sudhir Kumar, M. Naga Raju, S. Vijay Kanth and M. Madhu Babu as Peons in the LIC of India, Vijayawada Branch Office, is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 18th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Petitioner

WW1: Sri S. Vijaya Kanth

Witnesses examined for the

Respondent

MW1: Sri G. Srinivasa Rao

Documents marked for the Petitioner

- Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
- Ex.W2: Photostat copy of minutes of enquiry of ALC(C)
- Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
- Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012
- Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
- Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
- Ex.W7: Photostat copy of Order of Hon’ble Supreme Court of India in C. A No.953-968/2005
- Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
- Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015
- Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
- Ex.W11: Photostat copy of Lr. No.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1666.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबंधित नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-3/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/12/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1666.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 3/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/12/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 18th day of September 2023

INDUSTRIAL DISPUTE No. 3/2013

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.
Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India, Branch Office,
Santhapet, Trunk Road,
Ongole

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/12/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri M. Srinivasa Rao, P. Pavan Kumar and K. Siva Sankarachari as Peons in the LIC of India, Ongole Branch, is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 3/2013 and notices were issued to the parties concerned.

2. **The averments made in the claim statement are as follows:**

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon'ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon'ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now, the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. **Respondent filed counter denying the averments of the Petitioner as under:**

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be

dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.270/- per day in C-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC

(Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon'ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon'ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon'ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the

Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon.ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID three persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

(i) Poluri Pavan Kumar - Presently working in Ongole Branch office

(ii) K. Siva Sankarachari- Presently working in Ongole Branch office

(iii) Methala Srinivasa Rao – Presently working in Ongole Branch office

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri Poluri Pavan Kumar as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri C. Madhusuhan as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?

2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions,

1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, "I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case." In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, "No appointment is given to me pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work." Further, witness WW1 states that, "Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher." Workmen's claims that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon'ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has nowhere stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, "he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other's name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other's name or dummy name. No single piece of evidence is adduced by Petitioner workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled

law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon'ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon'ble Apex Court have held,

"22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*"The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**", as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working, These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019."*

In view of the law laid down by Hon'ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon'ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon'ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri M. Srinivasa Rao, P. Pavan Kumar and K. Siva Sankarachari as Peons in the LIC of India, Ongole Branch is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 18th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

WW1: Sri Poluri Pavan Kumar

MW1: Sri C.Madhusudhan

Documents marked for the Petitioner

- Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
- Ex.W2: Photostat copy of minutes of enquiry of ALC(C)
- Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
- Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012
- Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
- Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
- Ex.W7: Photostat copy of Order of Hon'ble Supreme Court of India in C. A No.953-968/2005
- Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
- Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015
- Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
- Ex.W11: Photostat copy of Lr. No.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1667.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-4/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/11/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1667.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 4/2013) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/11/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

Present: Sri IRFAN QAMAR
Presiding Officer

Dated the 18th day of September, 2023

INDUSTRIAL DISPUTE No.4/2013

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.
Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India, Branch Office,
Main Road, Vinukonda.

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/11/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri B. Venkataiah, M. Srinivasa Rao, K. Veera Reddy, M. Stephen, M. Naveen Kumar and Chandra Naik as Peons in the LIC of India, Vinukonda Branch, Guntur District is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 4/2013 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon’ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon’ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other

Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. **Respondent filed counter denying the averments of the Petitioner as under:**

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment

of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.257/- per day in B-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC (Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and

issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon.ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon.ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon.ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon.ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID six persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) Bijenepalli Venkataiah - Presently working at Vinukonda
- (ii) Mattupalli Srinivasa Rao- Not working since Nov'2013 since permanent employee joined.
- (iii) Kasukoti Veera Reddy –Presently working at Vinukonda Branch
- (iv) M. Naveen Kumar – Not working at present.
- (v) Madigani Stephen- Presently working at Vinukonda
- (vi) R. Chandra naik-Not working since November, 2013 since permanent employee joined.

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri K. Veera Reddy as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri G. Srinivasa Rao as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?
2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wagger himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wagger in the voucher with that of the name orally furnished by the daily wagger at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wagger and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, “I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case.” In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, “No appointment is given to me pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work.” Further, witness WW1 states that, “Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher.” Workmen's claims that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon'ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their

appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has nowhere stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, "he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other's name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other's name or dummy name. No single piece of evidence is adduced by Petitioner workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon'ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon'ble Apex Court have held,

"22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*“The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**’, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.”*

In view of the law laid down by Hon’ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon’ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon’ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri D. Sivanageswara Rao, Pidatia Lakshmaiah, Shaik Kareemullah and Vanguri Sambasiva Rao as Peons in the LIC of India, Jaggaiahpet Branch, Krishna District is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 18th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri K. Veera Reddy

Witnesses examined for the
Respondent

MW1: Sri G. Srinivasa Rao

Documents marked for the Petitioner

Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
Ex.W2: Photostat copy of minutes of enquiry of ALC(C)
Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012
Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
Ex.W7: Photostat copy of Order of Hon’ble Supreme Court of India in C. A No.953-968/2005
Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015
Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
Ex.W11: Photostat copy of Lr. No.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1668.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-6/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल -17011/17/2012- आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1668.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 6/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/17/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri IRFAN QAMAR
Presiding Officer

Dated the 18th day of September, 2023

INDUSTRIAL DISPUTE No. 6/2013

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.
Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India, Divisional Office,
Employees Colony,
Nuzvid -521201.

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/17/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri M.R. Prasad Rao, B. Suresh, B. Venkataratnam, B. Vijayakumar, O. John Raju, D. Dileep Kumar and M. Venkat Rao as Peons in the LIC of India, Nuzvid Branch Office, is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 6/2013 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon'ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon'ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon'ble Tribunal. As a result of union's representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. Respondent filed counter denying the averments of the Petitioner as under:

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India.

Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.257/- per day in B-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC (Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised

to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon.ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wager, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon.ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon.ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of

the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon.ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID seven persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) M. Rajendra Prasad - Presently working Nuzvid branch
- (ii) Bandaru Suresh- Presently working Nuzvid branch
- (iii) B. Venkata Ratnam— Presently working Nuzvid branch
- (iv) Banavathu Vijaya Kumar- Presently working Nuzvid branch
- (v) G. Dilip Kumar - Presently working Nuzvid branch
- (vi) M. Venkata Rao - Presently working Nuzvid branch

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri Oggu John Raju as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri G. Srinivasa Rao as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

- 1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?
- 2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary

basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.
- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not

successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, "I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case." In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, "No appointment is given to me pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work." Further, witness WW1 states that, "Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher." Workmen claim that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon'ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has nowhere stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, "he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other's name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other's name or dummy name. No single piece of evidence is adduced by Petitioner workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need

and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon'ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon'ble Apex Court have held,

“22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wagger, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.”

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*“The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**’, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working, These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.”*

In view of the law laid down by Hon'ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon'ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon'ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri M.R. Prasad Rao, B. Suresh, B. Venkataratnam, B. Vijayakumar, O. John Raju, D. Dileep Kumar and M. Venkat Rao as Peons in the LIC of India, Nuzvid Branch Office, is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 18th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri Oggu John Raju

Witnesses examined for the
Respondent

MW1: Sri G. Srinivasa Rao

Documents marked for the Petitioner

Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
 Ex.W2: Photostat copy of minutes of enquiry of ALC(C)
 Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
 Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012
 Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
 Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
 Ex.W7: Photostat copy of Order of Hon'ble Supreme Court of India in C. A No.953-968/2005
 Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
 Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015
 Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
 Ex.W11: Photostat copy of Lr. Np.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1669.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और इन्सुरेंस एम्प्लॉईज़ यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-5/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-17011/10/2012- आईआर(एम)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1669.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 5/2013) of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Insurance Employees Union** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-17011/10/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD**

Present: Sri IRFAN QAMAR
Presiding Officer

Dated the 18th day of September, 2023

INDUSTRIAL DISPUTE No. 5/2013

Between:

The General Secretary,
Insurance Employees Union,
7-530, Godugupet,
Turlapati Vari Street,
Machilipatnam – 521001.

Krishna District, A.P.

..... Petitioner union

AND

The Branch Manager,
LIC of India, Branch Office,
Old Bus Stand Road,
Sattenapalli – 522403.

Guntur District.

.... Respondent

Appearances:

For the Petitioner : Sri Sarosh Batsawala, Advocate

For the Respondent: Sri Venkatesh Dixit , Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17011/10/2012-IR(M) dated 18/12/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workmen. The reference is,

SCHEDULE

“Whether the demand of the Insurance Employees Union, Machilipatnam to regularize the service of S/Shri S. Mallikarjuna Rao, P. Vijaya Kumar and P. Venkata Durga Prasad as Peons in the LIC of India, Sattnapalli Branch Office, Guntur District is legal and justified? What relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 5/2013 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

This dispute pertains to the aggrieved workmen of LIC of India-Machilipatnam and Nellore Divisions who have been working for periods in excess of 6 years, mainly as peons in offices of LIC of India and designated differently using different nomenclatures by LIC of India and remunerated sometimes in their own names and mostly using fictitious names, so as to deny them the benefits of leave, PF, ESI etc., and also to prevent them from seeking permanent employment in LIC of India. They are made to work for years together receiving remuneration which was not even the minimum wage. It is submitted that due to fear of loss of livelihood, many of the workmen coming of poorest strata of the Society and belonging to SC/ST/OBC continued to work for years together with the hope that some day they would receive justice and a permanent place in LIC of India. Earlier, National Industrial Tribunal NTB-1 of 1985, NTB-1 of 1987 gone through this problem and passed awards. The Union have taken the cause of these workmen even before the Supreme Court, in CA 953-968 of 2005 through our representations to Zonal Authorities dated 13th April, 2009 and 10th July, 2010. Hon’ble Supreme Court of India has passed an order on 18th January, 2011 in Civil Appeal Numbers 953-968 of 2005 based on a Scheme put forth before Hon’ble Supreme Court of India by LIC of India. This Scheme envisaged giving appointment to workmen based on a one time Special Examination and Interview. LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court dated 18th January, 2011 and 20th May, 2011. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. It is submitted that in some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment. Petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner(Central) who conducted Conciliation Proceedings in July, 2012. The Conciliation ended in a failure. Consequently Government of India, Ministry of Labour and Employment referred this matter to this Hon’ble Tribunal. As a result of union’s representation to Chief Labour Commissioner (Central) these workmen were paid wages according to Minimum Wages Act, 1948 from August, 2011 only. Now they are receiving wages in their own name also. The independent investigations made by Assistant Labour

Commissioner(Central) and Deputy Chief Labour Commissioner(Central) bear testimony to the fact that the workmen were remunerated in fictitious names earlier, resulting in denial of opportunity to enter the process of recruitment envisaged by the Hon'ble Supreme Court on 18th January, 2011 in CA 953-968 of 2005. The Category of workmen whose cause we champion are certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities. The names and details of the workmen and also their ID numbers are enclosed as Annexure. Now the Zonal Office of LIC of India, Hyderabad has issued instructions to Divisional Offices to Terminate/remove all these workmen. These instructions are issued after the issue of the orders of Ministry of Labour and Employment dated 18th December, 2012 and clearly attract the provisions of Section 33A of Industrial Disputes Act, 1947. Hence, it is prayed to stop LIC of India from going ahead with this plan. Further, it is prayed that the practice of remunerating Temporary Workmen with false names was being followed in 1980s, 1990s and up to 2011 also. This matter received the consideration of earlier NITs. It is submitted that extracts from the Award of Justice Jamdar referred above, indicates the unfair labour practice of employing persons on temporary basis and remunerating them under false/fictitious names. This practice was of LIC's creation and much earlier to the present order of the Hon'ble Supreme Court of India in CA 953-968 of 2005, Dt.18.1.2011. It is submitted that this practice of LIC be put to an end and Respondent be directed to continue all these workmen in employment and make them permanent. Petitioner union be allowed to file material/information as supplement to this statement as additional claim. Therefore, it is prayed to direct LIC of India and their Authorities to continue these workmen in employment at their respective places of work and restrain LIC from doing anything adverse in the matter. It is further prayed to absorb these workmen in permanent posts by conducting a separate test.

3. Respondent filed counter denying the averments of the Petitioner as under:

It is submitted that the present ID is not just and sustainable in law and the same is liable to be dismissed. It is submitted that the present ID is not maintainable, as the present petitioner, who is represented by the Union already approached the Hon'ble AP High Court prior to filing of the subject matter/ I.D. and the same is liable to be dismissed. It is submitted that, the petitioners/workmen are not contract sub staff and no temporary appointment letter was given to the petitioners, but they worked on daily wage basis whenever there was work. It is submitted that the respondent Corporation has announced for Recruitment of Peons vide Notification dated 20.5.2011 as per the directions of the Hon'ble Supreme Court in CA Nos.953-968 of 2005 of DV Anil Kumar and Others Vs. LIC of India. Respondent has followed the instructions specified in the Notification and all the candidates who satisfied all the eligibility criteria were allowed to attend the One-Time Written Examination held on 26.6.2011. It was also specified in the Notification that the onus of furnishing authentic documentary proof at the time of submission of application shall be on the candidate. It is further submitted that there has been no instance of any case where this Division of LIC being questioned, before any court of law. All the candidates who have submitted their applications along with all necessary proofs of eligibility were allowed for the test. It is submitted that it is not correct that the Petitioners are drawing meagre salaries in fictitious names. It is submitted that there were no complaints till date regarding non-receipt of wages by any of the daily wagers, which shows the prompt and systematic payment of wages to daily wagers. The amount paid per day for a person who was engaged as a daily wager is paid according to the Law and respondent Corporation is following the procedure laid down in this regard. Due to the pendency of recruitment in Peon cadre, respondent Corporation have been engaging daily wagers, mostly for attending peon duties, as per the requirement. It is also submitted that the Corporation did not deny the available chances of the daily wagers as per their entitlements. Respondent Corporation has been following the instructions given by Competent Authority of the Corporation regarding the engagement of daily wagers. It is submitted that no unlawful action was taken by respondent Corporation in engaging the daily wage workmen. It is submitted that the Hon'ble Supreme Court of India, while disposing of the Civil Appeals No.953-968, issued Orders to LIC of India, that, as a one time measure, to recruit all the eligible Temporary Employees under Class IV cadre, who are working in LIC of India for more than 5 years as on 18.1.2011 and who possess minimum eligible qualifications and age at the relevant time of their entry into LIC of India, by holding a limited written examination (falling under Category A). It was also specified in the Notification that the candidates falling under Category A, will have to submit copies of proof of their working with the Corporation for more than 5 years as on 18.1.2011. It was further specified that the onus of furnishing the authentic documentary proof for the same at the time of submission of the application shall be on the candidate. Further it was also clarified that Temporary Class IV Employees connote Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, Daily Wager, Temporary Part-Timer etc. LIC of India has scrupulously followed these instructions and all the candidates who satisfied all the eligibility criteria were allowed to attend the one time written examination held on 26.6.2011. It is further submitted that LIC of India (Employment of Temporary Staff) Instructions, 1993 are separate set of instructions issued by Respondent corporation with regard to appointment of staff on temporary basis. Corporation has not promulgated the issue of daily wagers along with that of temporary staff. It is submitted that the Corporation have not engaged any workmen on temporary basis since many years and the Petitioners under this Petition are engaged only on daily wage basis. Since, the Hon'ble Supreme Court of India, while disposing the Civil Appeals issued orders to LIC of India, as a one time measure, to recruit all the eligible temporary employees under Class IV Cadre, who possessed minimum eligible qualifications, the Corporation has

followed those instructions scrupulously. It is further submitted that the petitioners in the present ID are engaged by respondent Corporation on daily wage basis and they are not found eligible to write the one time examination and there is no unlawful method adopted in not allowing them to write the examination. It is submitted that the issue of engaging workmen on daily wage basis was verified by various authorities, basing on the anonymous complaints given by some persons, but no adverse reports were submitted to this respondents, which clearly show that there is no misappropriation of funds of this respondent Corporation and this Corporation has been paying the wages to the daily wagers very promptly and in the name as has been furnished by the daily wager himself. But, some daily wagers, who were not qualified to appear for the written test, including the Petitioners, made complaints alleging about the criminal activity of misappropriation of funds by Divisional Officials, after having worked without any problem. It is submitted that the daily wagers are being paid a consolidated amount of Rs.257/- per day in B-Class cities which is more than the rates suggested by the Regional Labour Commissioner. It is wrongly presented by the Petitioners that they were paid wages. Since, the Petitioners were engaged only on daily wage basis (were not given appointment on temporary basis), the wages paid to them cannot be paid from Salary Account. It is highly objectionable to state that the Corporation Funds are misappropriated, without any valid proof. Every daily wager was aware of the fact that he was engaged on daily wage basis and there is no provision in LIC of India to regularize or appoint the daily wager on permanent basis. It is a baseless allegation to state that the Office is playing with the lives of the daily wagers. It is further submitted that it is also highly objectionable to state that the LIC of India have succeeded in deceiving the Hon'ble Courts and Constitutional Authorities and their baseless conclusions cannot be accepted. The Petitioners are not competent enough to conclude that LIC of India is submitting false counter Affidavits before the Courts. At any level respondent Corporation has not received any adverse reports either from CVC or CVO or CBI till date. There is no specific salary account to respondent Corporation for Payment of daily wages to these daily wagers/badli workers. Respondent Corporation has been following the prescribed method of payment of daily wages as per the instructions of the Competent Authority from time to time. It is submitted that Petitioners engaged only on daily wage basis but it was wrongly represented as on temporary basis. In case Appointments, a letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as Salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC (Employment of Temporary Staff) Instructions, 1993. But, the petitioners were engaged only on daily wage basis depending upon the requirement of Respondent Offices, they can not be issued the appointment letters and the remuneration paid cannot be paid from Salaries Account. It is submitted that the applications of the candidates who have submitted with all necessary documentary proof were considered by higher Office. The applicants were advised to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011, from the concerned In-Charges of the Branches in which they have worked. It is also specified in the Notification that the onus of obtaining necessary proof shall lie with the candidate only. It may be reiterated that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on permanent basis, their remuneration cannot be paid from Salaries Account. The payment to a daily wager shall be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the Cash Counter. Respondent follows a systematic procedure in making any payment, viz, one prepares the voucher, the Supervisory Official checks the Voucher and the concerned Head of the Department passes the Voucher. No single Official was continued to work for the same job of preparing the Vouchers or for checking and passing them for the past 18 years, as has been alleged in the Petition. It is not correct that the Officials of the Corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is submitted that 35 candidates who are working as daily wagers filed WP No:16063 of 2011 praying the Hon'ble High Court of AP to pass appropriate orders to the respondent/LIC in not forwarding the applications of the petitioners and also not allowing them to appear for the examination to be conducted on 26.6.2011. After hearing the same the Hon'ble High Court disposed the Writ with a direction that is, if the petitioners fulfill the conditions viz., they are working in LIC as class IV employees for more than five years as on 18.1.2011 and possess minimum eligible qualification, age, their applications shall be forwarded to the authorities concerned and take appropriate decision by the second respondent/SDM DO Machilipatnam in accordance with the records maintained by them with due diligence. As the above said Writ petitioners are not found eligible they have not appeared for the written examination. There after the said writ petitioners filed a CC No:951/2011 against the orders dt. 15.6.2011 against the respondent Corporation with a prayer to punish the respondent for the alleged violation of the order dt.15.6.2011 passed in WP No.16063 of 2011 and to that effect a detailed counter affidavit was filed by the respondent Corporation stating that the petitioners did not actually work for more than five years as on 18.1.2011, and therefore there was no willful disobedience of the orders and the Hon'ble High Court came to the conclusion and the contempt case was dismissed without costs. It is submitted that having every knowledge that the petitioners are working as daily wagers they are seeking all remedies before the court of law and the litigation is unwarranted. It is submitted that the petitioners under the ID are working as daily wagers and issuance of pay slips to the temporary workmen does not arise as they are not regular employees. Respondent Corporation is maintaining the necessary records and paying the wages as per law to the petitioners herein in that aspect there is no dispute. It is submitted that there is no obstinate stand taken by the respondent Corporation and the Writ petition No:16063/2011 and the CC No:951/2011 passed by the Hon.ble High Court and the respondent Corporation has taken proper steps in identifying the eligible candidates and the eligible candidates were appointed as

per their entitlement and all other allegations are denied. It is submitted that the temporary workmen those who are appointed as per LIC of India (Employment of Temporary Staff) Instructions 1993 dt.28.6.1993, but no workmen under class IV cadre were appointed as Temporary workmen for the past several years in Machilipatnam Division. Daily wage workers are engaged, as per the requirement of the offices. Appointment letters shall be given only to those workmen who are appointed on Temporary Basis and no such letters shall be issued to Daily Wagers. Moreover, remuneration shall be paid to the Daily Wage workers for the services rendered by them and such payment shall not be treated as Salaries and cannot be paid through Salary Account. It is submitted that there are no instructions in LIC of India to regularize or to absorb a temporary workman or a daily wagger, for whatever period they have worked. It is further clarified in our LIC of India (Staff) Regulations, 1960, under Regulation.8(2) that no person appointed as temporary workmen shall by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post. The scope of the case referred to by the Petitioners under the Orders of CGIT, New Delhi, in ID No.27 of 1991 dt.18.6.2001, that temporary employee who completes 85 days of service has to be absorbed by the Corporation, is limited only to that particular specific case and the same cannot be applied to all the other cases. The respondent Corporation is following the systems and procedures specified in the LIC of India (Staff) Regulations and specific instructions issued by the Corporation from time to time. It is submitted that the CC 951 of 2011 was dismissed by the Hon'ble High Court against the Respondent Corporation with a clear observation that there are no disobedience of orders passed in WP No:16063 of 2011. Making repeated allegations against the same subject matter before the different courts is nothing but abuse of the legal machinery. It is further submitted that the petitioners represented by their union secretary filed Public Interest Litigation PIL No:494/2013 before the Hon'ble High Court against the same subject matter, which is disposed on 9.12.2013 in view of the dismissal order passed in WP 19445/2011 by the Hon'ble High Court of AP. A copy of the order passed in PIL No:494/2013 and a copy of the Order passed in WP No.19445/2011 are also filed. It is also Submitted that the petitioner has filed a WP No.37210/2013 on 9.12.2013 for with the same prayer. It is submitted that as per the procedure there is no such practice of issuing of ID numbers to the daily wagers. It is submitted that as per regulation No:33 of ID Act which deals with the conditions of the service etc., to remain unchanged under certain circumstances during the pendency of the dispute. The subject dispute under ID Act was said to be filed on 10.1.2013 where as the Hon'ble Apex Court has issued its orders dt.18.1.2011 regarding the appointment of eligible candidates as class IV employees and also removal of ineligible candidates which includes these daily wagers. All the subsequent acts of removal of these daily wagers are only the acts of implementing the Hon'ble Apex court order on the instructions of the Corporation. Hence the allegation of removal of the daily wagers was not given during the pendency of the dispute but only on the observation of the Hon'ble Apex Court which is given as under:

"Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment." It is submitted that all the daily wagers under Machilipatnam Division are removed as per the Apex court order in the month of January 2013 out of them, some of the daily wagers are again engaged in the month of March 2013 due to the office exigencies. In the present ID three persons were shown as daily wagers, and the details of the daily wagers under the ID are as under:

- (i) Sattenapalli Mallikharjuna Rao - Presently working in Sattenapalli
- (ii) Puli Vijaya Kumar - Presently working in Sattenapalli
- (iii) P.V. Durga Prasad- Presently working in Sattenapalli

It is submitted that in the circumstances the daily wagers who are being represented by their union are only engaged on daily wage basis and they are not appointed on Temporary basis and they are aware of their engagement at the time of their engagement itself. It is further submitted that the daily wagers are not permanent employees of the Corporation. It is further submitted that there is no cause of action for the present petition. Hence, the present petition is not maintainable as devoid of merits and is liable to be dismissed.

4. Petitioner union examined Sri Sattenapalli Mallikarjuna Rao as WW1. The witness got marked Photostat copies of ten documents which were marked as Ex.W1 to W10. Respondent examined Sri G. Srinivasa Rao as MW1 and Management witness marked Photostat copy of letter dated 26.12.2012 of the Respondent organization as Ex.W11.

5. Perused written arguments filed by both parties.

6. Although Petitioner union has taken number of pleas in their claim statement but the question regarding regularization of workmen has been referred through the reference for adjudication in the present matter. Therefore, we are confined to adjudicate the issue of regularization of workmen in the present matter.

7. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

- 1. Whether the workmen are entitled for regularization or absorption in the employment of LIC of India on permanent basis as alleged in the claim statement?

2. To what relief the workmen are entitled?

FINDINGS:-

8. **Point No.I:** In order to prove and fortify the version of workmen WW1 has been examined in evidence. WW1 in his testimony claimed that he along with other workmen had worked with Respondent LIC of India for more than 11 years and Respondent designated them differently using different nomenclatures and some times using fictitious names so as to deny him the benefit of leaves, PF, ESI etc., and also to prevent him from seeking permanent employment in LIC of India. They made him to work for years together received remuneration which was not even the minimum wages. For the fear of loss of work, the workmen did not protest with the hope that some day they would receive justice and permanent place in the LIC of India. WW1 further testify that Hon'ble Apex Court passed an order on 18.1.2011 in C.A. No. 953-968/2005. Hon'ble Apex Court has approved the scheme submitted by LIC of India for regularization of temporary employees. The scheme envisages one time Special Examination and interview to regularize the temporary employees as per eligibility criteria. Therefore, LIC of India framed rules and issued instructions for implementation of the Order of Supreme Court. These rules were left for implementation to the mercy and discretion of several Appointing Authorities in each division of LIC of India. In some Divisions authorities issued service certificates to workmen who received emoluments in different/fictitious names, whereas in some other Divisions such workmen were refused to enter into the process of recruitment because of chaotic situation in 2011 and workmen denied opportunity seeking Permanent employment were forced to knock every door. The Category of workmen whose cause Petitioner union were certainly governed under the Supreme Court order but were prevented to enter the process of recruitment as a result of unfair labour practice of remunerating the workmen under different/fictitious names. This unfair labour practice is unearthed by the Central Labour Authorities.

9. On the other hand, Respondent has refuted the said plea of the Petitioner union in his counter. He contended that the Petitioners in the present petition are not appointed on a temporary basis but they were taken only on daily wage basis. But it is wrongly represented in the petition that they have been working as temporary workmen. In case of the temporary appointments, letter of appointment shall be given only to workmen appointed on temporary basis and the remuneration paid shall be termed as salaries and the same shall be paid from Salaries Account. All the temporary appointments are made according to the LIC of India (Employment of Temporary Staff) Instructions, 1993. But the Petitioners under the petition were engaged only on daily wage basis depending upon requirement of offices of Respondent and they can not be issued the appointment letters and the remuneration paid can not be paid from salary account. Further it is contended that the Respondent corporation has scrupulously followed the orders issued by the Hon'ble Supreme Court of India by disposing the C.A.No.953-968/2005 and followed the instructions notified in the notification dated 20.5.2011 and the instructions issued by the Central Office. Further, it is contended that, the applications of the candidates who have submitted with all necessary documentary proof were considered by higher authority. Applicants were asked to obtain their proof of working with the Corporation for more than 5 years as on 18.1.2011 from the concerned In-charges of the branches in which they have worked. It is also specified in the notification that the onus of obtaining necessary proof shall lie with the candidates only. It is further contended that the records are maintained in the names of the daily wagers, as furnished by the daily wager himself. The eligible candidates were considered only basing on the documentary proofs submitted by the candidates. Since the daily wagers are not appointed on temporary basis their remuneration can not be paid from salaries account and payment is to be made after verifying the name mentioned by the daily wager in the voucher with that of the name orally furnished by the daily wager at the cash counter. Respondent Management follow a systematic procedure in making any payment i.e., one prepares the voucher, the Supervisory Official checks the voucher and the concerned Head of the Department passes the voucher. No single official was continued to work for the same job of preparing the vouchers or for checking and passing them for the past 18 years as has been alleged in the petition. It is also not correct to state that officials of the corporation are exploiting the daily wagers on payment of pittance in the name of wages. It is also contended that Petitioner under the ID are working as daily wager and issuance of pay slip to the daily workers does not arise as they are not regular employees. In this context all other allegations are denied and this Respondent Corporation is maintaining the necessary records and paying the wages as per law to the Petitioners herein in that aspect there is no dispute.

10. Before proceeding to examine the claim of workmen, it would be pertinent to look into direction of the Hon'ble Supreme Court of India given in C.A. No.953-968/2005 vide judgement dated 18.1.2011, which has been extracted as below:-

“One time limited examination for those of temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

- The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective zone.

- Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.
- Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.
- In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

11. In the present matter workmen in this case claims that they are eligible to appear in the examination as per guidelines fixed by Hon'ble Supreme Court of India in C.A. No.953-968/2005 but their candidatures were ignored for the written examination held on 26.6.2011. Actually they were in the Corporation but the authorities have been paying wages by affixing their signatures in others' dummy names.

12. On the other hand, Respondent witness MW1 has contended that the Petitioners in dispute are daily wage earners, they were on daily wage basis, whenever there was work which was in contingent nature. They are paid wages as per Minimum Wages Act. They are not appointed as contract Sub-staff or to any Class.IV posts nor appointed on temporary basis. The persons are engaged by the Respondent on need basis to do miscellaneous jobs who are available in local area. The persons in dispute who are not eligible to appear in the one time examination, resorted to make false allegations stating that the wages were paid to them on dummy and fictitious names. MW1 further states when the appointments are regulated by Statutory Rules, the concept of Industry to that extent stands excluded. Petitioners are not appointed to any post in accordance with rules. Further, MW1 states that, one time limited examination for those temporary persons who are working in LIC of India for more than 5 years and possess minimum educational qualifications, who possess minimum eligible qualifications and age as prescribed at the relevant time of their entry into the LIC of India, such of those temporary employees who do not apply or not successful in the examination shall cease to be in the employment, including those temporary persons who are not governed under these conditions, shall also cease to be in the employment.

13. It is also stated that workmen were asked to obtain the proof of working with LIC of India for more than five years as on 18.1.2011 from the concerned Incharge of branches in which they had worked. It was also specified in the notification that onus of obtaining necessary proof of employment lies upon candidates. The eligible candidates were considered only basing upon the proof submitted by them. But as per the instruction issued, the workmen in the present matter did not submit the proof of five years work with the Corporation, hence, their candidatures were not considered. However, as regards the allegation of discrimination and malpractice in the said examination/event the workmen approached the Hon'ble High Court through writ and Hon'ble High Court was pleased to dismiss the said petition as found baseless and without substance. Therefore, in compliance of the direction of the Hon'ble Apex Court in CA No.953-968/2005, LIC of India has conducted one time examination for regularization of the temporary employees who possess eligibility criteria of more than five years service with the LIC of India.

14. Whereas on the other hand, WW1 in chief examination has reiterated and supported the version as stated in the claim statement but in the cross examination he states that, “I have not filed any identity card in this case in support of proof of my identity. The Respondent has not issued any identity card to me. This dispute has been filed by our union being represented by its General Secretary. I am deposing in this case in my personal capacity being one of the workmen. The Petitioner union has not given any authorization to me to adduce evidence in this case.” In the present matter, claim statement has been filed on behalf of the Insurance Employees Union represented by its General Secretary, Machilipatnam, Krishna District, but the witness states that he has no authorization from union to depose in the case and he is giving statement in his personal capacity. Thus, the claim of the Petitioner union in this matter can not be said to be proved by evidence of WW1. Further, WW1 states, “No appointment is given to me pursuant to my application. I know Respondent Corporation is a Government organization and their recruitment process for appointment of the staff. I have taken as a casual labour by the Respondents organization. At the time of necessity I had been engaged as a casual labour and continued to work.” Further, witness WW1 states that, “Even though I had worked under the Respondent Management but directly money was not paid to me and money had been paid in some others name but I used to put my signature on the voucher.” Workmen's claims that they were eligible to appear in the one time examination held by the LIC of India in compliance of the order of the Hon'ble Apex Court, but they have not filed nay appointment letter issued by Respondent nor has produced identity cards to prove their appointment as temporary workmen further they failed to produce the document of more than five years service with LIC of India as a temporary employee as well as eligible to appear in one time examination for regularization. Thus, the claim of the workmen that they are temporary employees and having more than 5 years service with the LIC of India is not held proved. Further WW1 admitted in his cross examination that he had worked with the LIC of India as daily wager whereas the policy for regularization scheme was meant for temporary employees who has been appointed under Temporary Employees Recruitment Rules, 1987 of LIC of India. Therefore, it is clear that the

appointment of workmen was not made in the LIC of India under any rule or statute. Secondly, the workmen had not produced any proof of temporary service for more than five years with LIC of India and did not fulfill the criteria of eligibility as per instruction. The burden of proof to prove the eligibility for one time examination for regularization rest upon the workmen. He should have produced the evidence of payment of wages to them for five years or identity card or appointment letter but none of these was produced. Thus, he failed to discharge his burden of proof in this regard. Further, WW1 has nowhere stated that his initial appointment was made by competent authority and his appointment was made against the sanctioned post on which he was working as a temporary employee/daily wager. The other relevant proof of employment is payment of salary, to the workman by LIC of India. But WW1 states that wages were not paid to them directly and it was paid in dummy fictitious names. While the WW1 himself admitted in cross examination that he had no personal knowledge about the allegation made against the Respondent Management, the allegation made against the Respondent in this regard in claim statement not stands proved by evidence of WW1. Further, WW1 admits that, "he had worked as casual labour with the Respondent organization at the time of necessity and he had been engaged as a casual labour and continued to work. Thus, it manifests from the above that workman has not worked continuously for more than five years as a temporary employee, thus he was not found eligible for appearing in one time examination, for regularization.

15. Further, WW1 states that he was not paid wages directly but the wages were paid in some other's name and he used to put his signature on voucher. First of all the workman claimed to have worked with the LIC of India for more than six years as a daily wager and getting the wages payment regularly from employer, i.e., LIC of India. But at no point of time while receiving wage he had raised the objection that he had worked for the whole period then why he is being paid wages in other's name or dummy name. No single piece of evidence is adduced by Petitioner workman in this regard that he ever raised any objection or filed complaint against the LIC of India in the past in this regard. However, Respondent has categorically refuted such allegation in his evidence. Thus, in such circumstances, irresistible conclusion comes out that workman had not worked as a temporary employee against any sanctioned post and he was not appointed by competent authority. It can not be ruled out that he must be receiving the payment of wages in fictitious names, for some interest or the reasons best known to him. From the fore gone discussion this is irresistible conclusion that workman had worked as daily wager in the Respondent Corporation only as the need and exigency basis. Thus, the workman himself has committed wrong by receiving the wages in fictitious names from LIC of India, therefore, he was not found eligible to appear in the one time examination scheme. As per settled law the wrong doer can not be allowed to take advantage of their own wrong committed by them. On this count, I find no force in the claim of the workmen.

In this context, the decision of the **Hon'ble Apex Court in the case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India in Civil Appeal No.2417-2418/2014 dated 17.2.2014 is relevant**, wherein the Hon'ble Apex Court have held,

"22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution.

In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules). However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Further, recently in the case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh & Ors. In CA dated 8.2.2023** Hon'ble Apex Court have held,

*"The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. V. Umadevi and Ors.**", as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working, These*

two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019."

In view of the law laid down by Hon'ble Apex Court workmen failed to prove their claim of eligibility criteria for appearing in one time examination for regular employment of LIC of India. Moreover, as they were not appointed against any sanctioned post by competent authority. Therefore, in view of the fore gone discussion and law laid down by Hon'ble Apex Court as mentioned above, the claim set up by Petitioner workmen in the present case for regularization is not acceptable for want of proof of their eligibility criteria as set up by the LIC of India and approved by the Hon'ble Apex Court in CA No.953-968/2005.

Thus, Point No.I is decided accordingly.

16. **Point No.II:** In view of the finding given in Point No. I, the workmen are not entitled to grant any relief and hence, petition is liable to be dismissed.

Thus, Point No.II is decided accordingly.

Result:

The demand of the workmen through Insurance Employees Union, Machilipatnam to regularize the service of S/Shri S. Mallikarjuna Rao, P. Vijaya Kumar and P. Venkata Durga Prasad as Peons in the LIC of India, Sattnapalli Branch Office, Guntur District is neither legal nor justified. Therefore, workmen concerned are not entitled to any relief as prayed for. Claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 18th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri Sattenapalli Mallikarjuna Rao MW1: Sri G. Srinivasa Rao

Documents marked for the Petitioner

Ex.W1: Photostat copy of report of ALC(C) to RLC(C) dt.2.2.2012
Ex.W2: Photostat copy of minutes of enquiry of ALC(C)
Ex.W3: Photostat copy of enquiry report of Dy. CLC(C) to CLC(C) 14.6.2012
Ex.W4: Photostat copy of CBI enquiry report dt. 3.5.2012
Ex.W5: Photostat copy of office noting of Central Vigilance Commission dt.26.2.2013
Ex.W6: Photostat copy of show cause notice of ALC(C) to LIC of India dt.15.5.2012
Ex.W7: Photostat copy of Order of Hon'ble Supreme Court of India in C. A No.953-968/2005
Ex.W8: Photostat copy of LIC of India Peon recruitment notification dt. 20.5.2011
Ex.W9: Photostat copy of memorandum of M/o Finance dt. 11.9.2015
Ex.W10: Photostat copy of LIC of India counter affidavit in CC 951/2011.
Ex.W11: Photostat copy of Lr. No.SCZO/P & IR/D III dated 26.12.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 11 अक्टूबर, 2023

का.आ. 1670.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गोमरडीह डोलोमाइट क्योरी, टाटा स्टील लिमिटेड के प्रबंधन के संबद्ध नियोजकों और श्री हामिया कुमार पटेल के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलोर, पंचाट (रिफरेन्स न.-36/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2023 को प्राप्त हुआ था।

[सं. एल-29012/19/2013- आईआर(बी-II)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th October, 2023

S.O. 1670.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 36/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Gomardih Dolomite Quarry, Tata Steel Ltd.** and **Shri Hamiya Kumar Patel** which was received along with soft copy of the award by the Central Government on 11.10.2023.

[No. L-29012/19/2013-IR(B-II)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 36/2013

Date of Passing Award – 30th June, 2023

Between:

The Senior Manager (Mining),
Gomardih Dolomite Quarry,
Tata Steel Ltd., P.O. Tummura, PS. Kutra,
Dist. Sundargarh (Odisha)

... 1st Party-Management

(And)

Shri Hamiya Kumar Patel,
Tata Camp, Gomardih, P.S. Kutra,
Dist. Sundargarh.

... 2nd Party-Workman.

Appearances:

Sri Subrat Mishra,
Advocate.

... For the 1st Party-
Management

Sri Agasti Kanungo,

... For the 2nd Party-
Workman.**AWARD**

The Government of India in the Ministry of Labour in exercising its authority conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred a dispute between the Management of M/s. Gomardih Dolomite Quarry of Tata Steel Ltd., Sundargarh and allegedly its workman vide letter No. L-29012/19/2013 – IR(B-II), dated 30.04.2013 for its adjudication and the schedule of the reference is as follows:-

“Whether the termination of the services of Sri H.K. Patel by the management of Gomardih Dolomite Quarry of M/s. Tata Steel, At./Po. Gomardih with effect from 04.02.2012 is justified and legal? If not, to what relief the workman is entitled to?”

2. The case of the 2nd Party-workman as per his statement of claim is as follows:-

That, he had joined in the Mining Division of the Management of Gomardih Dolomite Quarry, Tata Steel Limited on 23.01.1981 as Junior Assistant and thereafter he was promoted to the rank of Cashier on 06.07.1992. He had worked sincerely and honestly and no allegation of misconduct was found against him. In the mean-time he was elected as the Deputy Vice President of Gomardih Mazdoor Union in their election held on 06.05.2009 which was duly intimated to the Management. Thereafter he was also elected as the General Secretary of Gomardih Workers Union to espouse the cause of the contract workers. In the mean-while he was posted as Senior Assistant (Personnel) vide office order dated 27.05.2010 in weigh bridge Section of Gomardih Dolomite Quarry. The nature of work, status and responsibility in the weigh bridge section was completely different and he was intentionally and deliberately posted in the weigh bridge section for his Union activities. His re-designation as Senior Assistant (Personnel) by the Management in weigh bridge section of Gomardih Dolomite quarry is one of the colourable exercise of powers and completely changing his nature of work and condition of service without any notice. He has been transferred and posted to weigh bridge section, which is an embarrassment due to lower rank of work, for which he did not join the post. He was also restrained to join his earlier post to which he was working inspite of the fact that no relieve order was issued. Subsequently he submitted an application for leave and remained absent from 28.05.2010. He had raised his grievance before the authority for restoration of his earlier post, but failed. He was threatened and restrained to join in the weigh bridge section and finding no other way he remained on leave whereas his authorities never asked him to hand over the charge. The Management have not renewed his fidelity, guarantee personal accident policy and cash in transit policy for the year 2010-2011 with an intention to put him into trouble. He had been forced to take leave which was not granted by his authorities and they had broken the cash strong room without intimating him with the help of police so he was apprehending of civil and evil consequences. The Management instead of responding to the grievances issued charge sheet to him for his absence with effect from 28.05.2010 without permission causing misconduct as per order No. 30 of the Standing Order and the charge sheet was never served to him. He was not allowed to submit any reply to the charge sheet and the Management had appointed the Inquiry Officer to enquire into the charges levelled against him unilaterally in complete violation of the principles of natural justice. The Management vide reference No. SCM/GM/7304/12, dated 04.02.2012 of the General Manager FAMD had discharged and removed him from the service of the company and the same had not been served to him.

The General Secretary of the Gomardih Mazdoor union had written a letter to the General Manager of the FM Operation on 25.06.2010.

A prayer has been made to declare his posting in weigh bridge section as illegal. He further prayed to declare the issuance of charge-sheet of his unauthorized absence with effect from 28.05.2010 and his termination/removal as illegal, arbitrary and mala fide and an act of victimization and unfair labour practice. He has also prayed that he be reinstated in service with consequential service benefits.

3. The case of the 1st Party-Management of Gomardih Dolomite Quarry of TATA Steel Limited as per its written statement is as follows-

That the mines at Gomardih Dolomite Quarry is a captive mines of Tata steel plant at Jamshedpur and the workers employed in the mines are governed under the Certified Standing Orders of the Management along with the terms stipulated in the letter of appointment. The concerned workman had accepted the terms and conditions of the appointment letter and joined the Management as Junior Assistant being appointed by an appointment order dated 06.01.1981 and under Clause-6 of the appointment letter it has been mentioned as “you are liable to be transferred to anywhere within the mines and within the company in accordance with Rules.” The concerned workman was promoted to Senior Assistant grade and was assigned the duties of Cashier with effect from 06.07.1992 and his service was re-designated as Senior Assistant (Personnel) in his own grade and scale of pay. He was placed in the weigh bridge section at Gomardih vide letter dated 27.05.2010. Thereafter on the same day the 2nd party-workman applied for Privilege Leave from 28.05.2010 to 28.11.2010 on the same day and absented himself from duties

although leave was not granted. The 2nd Party workman has challenged the order of the Management in the court of Civil Judge, Senior Division, Sundargarh in C.S. No. 142/2010 seeking declaration that the re-designation of the post of the second party as Senior Assistant (Personnel) from the post of Cashier is illegal. He has also filed an interim application which was registered as I.A. No. 31/2010 and the said I.A. was rejected vide order dated 13.10.2010 holding that the post of Cashier and Senior Assistant (Personnel) are of same footing and same scale of pay. The 2nd Party-workman had absented himself from duties with effect from 28.05.2010 without any valid and satisfactory reason as well as without handing over the charge, which had adversely affected the works of the Management.

Subsequently the Management had issued letters dated 29.05.2010 and 02.06.2010 advising the 2nd Party-workman to report for duty but both the letters returned undelivered as he was not available in his permanent address as well as local address and the 2nd Party-workman had not intimated the Management any other address for communication. As the absence of the second party-workman amounts to misconduct a Departmental Proceeding was initiated vide charge sheet dated 28.06.2010. The Inquiry Officer found that the charges were established for which the 2nd party was discharged from his services on the grounds of committing misconduct under the certified standing orders.

The 1st Party-Management by way of reply has stated that the allegation made in Para-1 of the statement of claim requires no comment, the averments made in Para-2 of the statement of claim denied, the averments made in Para-3 of the statement of claim is not relevant, the averments made in Para-4 of the statement of claim are denied, the averments made in Para-5 of the statement of claim are misleading, the averments made in Para-6 of the statement of claim are false, the averments made in Para-7 of the statement of claim is denied, the averments made in Para-8 of the statement of claim is also denied, the averments made in Para-9 of the statement of claim is irrelevant, the averments made in Para-10 of the statement of claim it is required to be mentioned that the charge sheet was sent to the 2nd Party-workman through Regd. Post, the averments made in Para-11 of the statement of claim it is required to be mentioned that the enquiry was conducted in compliance of the principles of natural justice, the averments made in Para-12 of the statement of claim it is required to be mentioned that the removal order was sent by regd. Post, but could not be delivered because of his willful absence. The averments made in Para-13 and 14 of the statement of claim are beyond the scope of terms and reference.

A prayer has been made to order that the 2nd Party-workman is not entitled to any relief.

4. That, the second party workman has filed rejoinder to the written statement of the 1st Party-Management denying all the averments made in the written statements.

5. It is required to mention here that this Tribunal vide its order dated 27.10.2016 fixed the case for hearing on the point of fairness of domestic enquiry. The 2nd Party-workman being aggrieved by this order preferred Writ Petition bearing W.P.(C) No. 15631/2018 before the Hon'ble High Court of Orissa in which the Hon'ble High Court has been pleased to pass the following order which is as follows:-

“In view of such settled position of law as pronounced by the Constitution Bench of the Apex Court the rule of convenience, expediency and prudence and as there is no statutory prohibition, the procedure which promotes the cause of both employer and the management is to be laid down. Accordingly, we direct the Tribunal to proceed with the case without delaying the same in taking preliminary issue in a piecemeal manner and dispose of the I.D. Case No. 36/2013 as expeditiously as possible.

6. In view of the decision of the Hon'ble High Court the Tribunal instead of hearing on the point of fairness of domestic enquiry as a preliminary issue, have decided to hear all the issues together and subsequently settled the following issues which are as under:-

ISSUES

- I. Whether the reference is maintainable?
- II. Whether the departmental proceeding initiated against the 2nd Party-workman is fair or proper?
- III. Whether the termination of the services of Sri H.K. Patel by the Management of Gomardihi Dolomite Quarry of M/s. Tata Steel, At./Po. Gomardihi with effect from 04.02.2012 is justified and legal?
- IV. If not, to what relief the 2nd Party-workman is entitled?

7. The 1st Party-Management has examined only one witness. He is M.W.-1 Sri Pinak Mishra who is Senior Manager (HR).

8. The 1st Party-Management has proved following documents which are as follows:-

Ext.-1 xerox copy of the service record of the 2nd party-workman (two sheets).

Ext.-2 letter of appointment of the 2nd Party-workman dated 06.01.1881.

Ext.-3 xerox copy of the office order as re-designated as Sr. Assistant (P) dated 27.05.2010.

Ext.-4 xerox copy of leave application of the workman.

Ext.-5 xerox copy of the letter of refusal of leave dated 29.05.2010.

Ext.-6 xerox copy of the postal cover sent on local address of the 2nd party-workman (two pages).

Ext.-7 postal cover sent on permanent address of the workman (two pages).

Ext.-8 copy of the advisory letter addressed to the workman, dated 02.06.2010.

Ext.-8/A xerox copy of the postal cover sent to the workman on the local address.

Ext.-8/B xerox copy of the postal cover sent to the 2nd Party-workman on permanent address.

Ext.-9 xerox copy of the postal cover sent to the workman on his local address (two pages).

Ext.-10 xerox copy of the letter of the Enquiry officer to the Manager (Mining) dated 02.02.2012.

Ext.-11 xerox copy of the order-sheet-1 dated 5.8.2010.

Ext.-12 xerox copy of the order-sheet-2 dated 18.08.2010.

Ext.-13 copy of the order-sheet-3 dated 03.09.2010.

Ext.-14 xerox copy of the enquiry proceeding (40 wages),

Ext.-15 xerox copy of the discharge letter dated 04.02.2012 sent to the workman.

Ext.-16 xerox copy of the Standing Order (18 sheets).

Ext.-17 xerox copy of the order passed in I.A. No. 31/2010 dated 15/13.10.2010.

Ext.- 18 xerox copy of the judgement passed in Civil Suit No. 142/2010 to refute the claim of the disputants.

9. The 2nd Party-Workman has examined only one witness. He is W.W.-1 Sri Hamiya Kumar Patel, the workman.

10. The 2nd Party-workman has proved following documents which are marked as follows :-

Ext.-A photocopy of the letter No. GDMU/13/2009, dated 08.05.2009 issued by the secretary, GDMU showing the workman as Dy President.

Ext.-B xerox copy of the office order dated 27.05.2010.

Ext.-C letter of the General Secretary dated 05.06.2010 addressed to General Manager (Operation) to restore the workman to his post.

Ext.-D the xerox copies of the minutes of discussion dated 13.10.2011 before R.L.C., Rourkela between the representative of contract workers and representative of the Contractor, M/s. Tycoon Industries Pvt. Ltd (two pages).

Ext.-E the xerox copy of the award of Provident Fund Office, Rourkela holding the company to be responsible for non-payment of PF dues to the contract workers in support of his claims (thirty one pages).

FINDINGS

11. The Tribunal thinks it proper to discuss first of all the Issue No.II.

ISSUE NO. II

12. It is the pleading of the 2nd Party-workman that he had joined the Mining Division of the 1st Party-Management on 23.01.1981 as Junior Assistant and thereafter he was promoted to the rank of Cashier on 06.07.1992, but vide order dated 27.05.2010, he was posted as Senior Assistant (Personnel). It is the further pleadings of the 2nd Party-workman that the nature of work, duties and responsibilities of the weigh bridge section was completely different and he was intentionally and deliberately placed in the weigh bridge section for the Union activity. It is also the pleadings of the 2nd Party-workman that he did not join the post as no relieve order was issued and nobody had taken charge so he subsequently submitted an application for leave and remained absent from 28.05.2010. It is the further case of the 2nd Party-workman is that the Management had issued a charge sheet to the effect for his absence with effect from 28.05.2010, which was never served on him and he had not been given any opportunity to submit his reply to the charge sheet. It is also the pleading of 2nd Party-workman that subsequently inquiry officer was appointed, who conducted the proceeding exparte and he was dismissed/removed from service vide office order dated 04.02.2012.

13. On the other-hand it is the pleadings of the 1st Party-Management that the workman was re-designated as Senior Assistant (Personnel) on his own grade and same salary and was placed in weigh bridge section

at Gomardih vide order dated 27.05.2010 but on the same day he had applied for privilege leave on 28.05.2010 to 28.11.2010 and absented himself from duty without sanction. It is the further case of the Management that the second party workman had challenged the order of the Management before Civil Judge, Senior Division at Sundargarh and the same was dismissed. Subsequently a departmental proceeding was initiated against the second party-workman and in the said departmental proceeding charges levelled against the 2nd Party-workman was proved and he was removed from service.

14. Now the question arises as to whether the enquiry conducted against the 2nd Party-workman is fair and proper by the 1st Party-Management.

15. At this stage the Tribunal thinks it proper to go through the oral and documentary evidence of both the parties.

16. The M.W.-1 Sri Pinak Mishra has deposed that the 2nd party-workman was re-designated as Senior Assistant (Personnel) in his own grade and grade pay and placed in weigh bridge section at Gomardih vide office order dated 27.05.2010 but the second party without complying the order of the 1st Party-Management immediately applied for leave from 28.05.2010 to 28.11.2010 i.e. for six months and started absenting himself from duty without handing over the key of the iron chest and cash balance. He has also stated that the leave application submitted by him was rejected and was intimated to him by Regd. Post vide letter dated 29.05.2010 and subsequently another letter dated 02.06.2010 was also sent on his local and permanent addresses with an advice to report immediately. He has also stated that as the 2nd Party-workman continued to be absented from his duty unauthorizedly, a charge sheet was issued on 28.06.2010 which was sent to his local and permanent address. But after receiving no communication from the 2nd party-workman enquiry officer was appointed to enquire into the charges levelled against him vide letter dated 20.07.2010. He has also stated that the enquiry officer sent notice to the second party workman but he did not appear deliberately, so the enquiry was conducted exparte and the enquiry officer submitted his report holding the charges proved against him. He has further submitted that the enquiry report was sent to the 2nd party-workman on his local addresses as well as on his permanent address and thereafter the disciplinary authority in concurrence of the findings of the Enquiry Officer dismissed the second party workman.

In the Cross examination he has deposed that in the transfer order nothing has been mentioned about the handing-over the charge of cash and another financial document to any person and the charges levelled against the concerned workman was of unauthorized long absence. He has also deposed that he do not remember whether any notice of charge-sheet was published in the local newspaper or not? He has also stated that he has no knowledge about the holding of post of President of GomardihDolomite Mazdoor Union by the concerned workman and he has denied the suggestion that the 2nd Party workman was degraded because he was agitating the cause of contract workers.

17. On this point W.W.-1 Sri H.K. Patel has deposed that he was intentionally shifted from cash section to weigh bridge section by changing designation of cashier to Senior Assistant (Personnel) which amount to change in the nature and character of the job. He has also deposed that in the weigh bridge section there is shift duty, whereas in cash section the workman has to do all financial transactions like payment of salary etc. He has also further stated that he was never given relieve order to handover the charge of cash section and he had submitted leave application on 28.05.2010 and left the office. He has also deposed that he has never received notice officially or by post or through news-paper publication and he came to know about the discharge and termination of his service in the Civil Proceedings in the Court of Civil Judge (Sr. Division), Sundargarh. He had also deposed that he was Dy. President of Gomardihi Mazdoor Union and there was a dispute of contract workers in the Tycoons Industries Private Limited and workers had approached his Union which was taken over by him to address their grievance so the Management had intentionally and deliberately harassed him and shifted him to the weigh bridge section.

In the cross examination he has deposed that after receiving transfer order he had not reported to Senior Manager Gomardih Dolamate Quarry and he had not made any intimation to the Manager or any authority for making arrangement regarding taking over the charge of cashier. He has also deposed that he had taken leave on the same day he received the transfer order and he had no knowledge about the rejection of his leave application. He has stated that he had been on leave for six months without leave sanctioning order. He has further stated that it is not a fact that he had not responded to the charge sheet, notice of enquiry of Inquiry Officer, Inquiry Report and discharge letter. He has deposed that he had not received any notice of charge sheet in any manner in regard to the enquiry proceeding and discharge letter.

18. Now after analyzing the pleadings of both the parties and evidence of the M.W.-1 Sri Pinak Mishra and evidence of W.W.-1 Sri H.K. Patel the second party workman and it is quite apparent that the 2nd party workman Sri H.K. Patel was initially appointed in the Mining Division of the Management on 23.01.1981 as Jr. Assistant (Ext.-2) and thereafter he was promoted to the rank of Cashier on 06.07.1993.

19. Further it is also apparent that the 2nd Party-Workman was posted as Senior Assistant (Personnel) vide office order dated 27.05.2010 and posted at weigh bridge section of GomardihDolomite quarry (Ext.-3) and thereafter he had proceeded on leave by submitting leave application (Ext.-4).

20. Now the Tribunal thinks it proper to analyze the documentary evidence of the 1st Party-Management. It appears that Ext.-1 is the photocopy of service record of the 2nd party-workman and Ext.-2 is the photocopy of letter of appointment of 2nd party-workman. Further it appears that the Ext.-3 is the photocopy of the order re-designating the 2nd party workman as Senior Assistant (P) dated 27.05.2010 and Ext.-4 is a leave application of the second party workman by which leave had been sought for in the name of privilege leave from 28.05.2010 to 28.11.2010 which was received in the office of the Management on 27.05.2010 at 5.20 P.M. and the same was regretted on the same day. Further Ext.-5 shows that a letter was issued to the 2nd Party-workman on 29.05.2010 regarding regret of his leave with a direction to report in the office through Regd. Post, but the same was returned undelivered. The Ext.-6 and Ext.-7 are photocopy of postal cover of letters dated 29.05.2010 & 01.06.2010. The Ext.-8 is a letter issued by the Management to the 2nd party-workman on 02.06.2010 advising him to report duty through Regd. Post, but the same was returned as the addressee was not found. The Ext.-8/A, 8/B and 9 are the photocopies of postal covers of letters. Ext.-10 is the copy of report of inquiry into the charge-sheet of the Inquiry Officer dated 02.02.2012, Ext.-11 is the order sheet No. 1 dated 05.08.2010, Ext.-12 is the order sheet No. 2 dated 18.08.2010 and Ext.-13 is the order sheet No. 3 dated 03.09.2010 and in all the dates the second party workman was not present. The Ext.-14 is the copy of the Inquiry Proceeding consisting thirty nine pages.

21. After going through the Inquiry Proceedings it appears that the charge sheet letter No. GDQ/ESTB/718/10 dated 28.06.2010 was sent to the 2nd Party-workman through peon book and he refused to receive the said letter. This means that the second party workman has full knowledge about the charge-sheet and his refusal to receive the charge-sheet letter amounts to proper service. Further the 2nd Party-workman did not appear to the inquiry proceeding at any stage inspite of his knowledge and service of charge sheet letter whereas he has taken a plea that he had come to know about his discharge and termination from service in a case which he had filed in the Court of Civil Judge, Senior Division, Sundargarh in Civil Suit No. 142/2010 for declaring his posting as Senior Assistant (Personnel) from the post of Cashier is illegal. After going through the Inquiry proceedings it is also apparent that on each and every date of enquiry notice was sent to the second party workman through regd. Post, but he did not appear before the Inquiry Proceeding and the notice returned back as the addressee was not available.

22. The Ext.-17 is an order passed in I.A. No. 31/2010 by the Court of Civil Judge Senior Division, Sundargarh and in the same order the learned Civil Judge, Senior Division has rejected the petition holding that since the post of Cashier and the Senior Assistant (personnel) are of same footing having same pay scale so it cannot be a prima facie state that the petitioner (workman) has been degraded. Further, Ext.-18 is the judgment of District Sub-ordinate Civil Judge Senior Division, Sundargarh passed in C.S. No. 142/2010 which was filed by the 2nd Party-workman for declaring his posting as Senior Assistant (Personnel) from the post of Cashier is illegal but the same has been dismissed by the learned Civil Judge Senior Division.

23. Now coming to the documentary evidence of the 2nd party workman it appears that he has placed reliance to Ext.-A which shows that he has been elected as Deputy President of GomardihDolamaite Mazdoor Union on 16.05.2009. Further Ext.-C which is a letter written by the General Secretary dated 05.06.2010 to General Manager (Operation) regarding posting of two of his office bearers to work in weigh bridge section but in the said letter nothing has been mentioned about the name of the workman. Ext.-D is the minutes of the discussion held between the Tycoon Industries Contractors and the workman represented by some workmen on 13.10.2011, but in the said minutes the name of the 2nd party workman is not mentioned, so it is not concerned with in this case. Ext.-E is an order passed under section 7-A of the E.P.F. & M.P. act in which the concerned workman had represented by the GomardihDolamite Workers Union, but this order was passed on 14.07.2016 which is much after the dismissal from service of the 2nd party-workman, so it is also not relevant in this case.

24. Now after analyzing the pleadings of both the parties and oral evidence of the M.W.-1 Sri Pinak Mishra and evidence of W.W.-1 Sri H.K. Patel the second party workman as well as documentary evidence of both the parties, it is quite apparent that the 2nd party workman Sri H.K. Patel was initially appointed in the Mining Division of the Management on 23.01.1981 as Jr. Assistant (Ext.-2) and thereafter he was promoted to the rank of Cashier on 06.07.1993.

25. Further it is also apparent that the 2nd Party-Workman was posted as Senior Assistant (Personnel) vide office order dated 27.05.2010 and posted at weigh bridge section of GomardihDolamite quarry (Ext.-3) and thereafter he had proceeded on leave by submitting leave application (Ext.-4).

26. It is important to mention here that the 2nd party-workman had applied for leave from 28.05.2010 and his leave was regretted on the same day. Further, as per the inquiry proceeding copy of the charge-sheet was sent to his local address through peon book but he refused to receive the said letter. Moreover, he had applied for privilege leave up to 28.11.2010, but even after 28.11.2010 he had not reported for his duty and he remained absent and subsequently on 02.02.2012 the report of the inquiry proceeding (Ext.-10) into the charge sheet was submitted before the Senior Manager of the Mining Division and vide order dated 04.02.2012.(Ext.-15) he was discharged from the service.

27. It is relevant to mention here that the 2nd Party-workman has taken a plea in his evidence that he came to know from his discharge/termination in the Civil Proceedings in the court of Civil Judge, Senior Division, Sundargarh in C.S. No. 142/2010 after the written statement filed by the Management. But he has not mentioned any particular date about his knowledge of the discharge/termination.

28. In view of the above discussion it is very much clear that there is a refusal of receiving charge-sheet by the 2nd party-workman and in course of enquiry letters were issued to him but those letters were not delivered as he was not available and subsequently exparte proceeding was conducted in which he was found guilty. Moreover he came to know about his discharge from service through written statement filed in Civil Suit which was dismissed as not maintainable.

29. Hence, it appears that sufficient and proper opportunities were given to the 2nd Party-workman to appear before the inquiry proceedings, but it appears that he deliberately avoided to appear before the enquiry proceedings and he had taken privilege leave from 28.05.2010 to 28.11.2010 out of annoyance that he was transferred from the post of Cashier to weigh bridge section but he did not attend to his duty after expiry of period of leave sought by him. Further in the order passed by the Civil Judge, Senior Division, it has been categorically held that both the posts are of same footing having same scale of pay, so there is no change of nature of job of the 2nd party-workman.

30. In view of the above discussions the Tribunal comes to conclusion that the charge for which enquiry proceeding was conducted against the 2nd party-workman is fair and proper. This issue is answered in negation against the 2nd Party-workman and in favour of the 1st Party-Management.

31. The Tribunal finds it appropriate to discuss the Issue No. III and IV as both are related to each other for sake of convenience.

ISSUE NO. III & IV

32. It is the pleadings of the 2nd party workman that, he had been transferred from the post of Cashier to the post of Senior Assistant (Personnel) vide office order dated 27.05.2010 because he was involved in the Union activities and he was the Deputy President of the GomardihDolomite Mazdoor Union. It is the further pleadings of the 2nd party-workman that as per the order No. 30 of the Certified Standing Order of the Management the workman cannot be dismissed from service unless he is informed in writing of the alleged misconduct.

33. Whereas it is the case of the 1st Party-Management that the 2nd Party-workman has absented from duty with effect from 28.05.2010 un-authorizedly and without any valid and satisfactory reason and he did not attend his duty even after sending letters to him, so it is a serious misconduct on behalf of the 2nd party-workman. It is also the case of the Management that a fair departmental enquiry was conducted against the 2nd party-workman and he had refused to accept the charge sheet, so he has full knowledge about the inquiry proceeding and he had avoided to receive the notices as he was not available in the residence at the time of delivery of registered post letters which returned unserved on account of non-availability of the addressee

34. In this regard the Management Witness No. 1 has deposed that after receiving the transfer order dated 27.05.2010 the 2nd party-workman applied for six months leave without handing over the key of the iron chest and cash in balance which hampered the work of the 1st Party-Management. He has also stated that the 2nd Party has absented from duty unauthorizedly from 28.05.2010 and the charge sheet was issued against him for his absence and after finding the charges proved against him he was dismissed from service vide office order dated 04.02.2012 (Ext.-15).

35. At this stage it is relevant to mention here that under Order No. 30(xxix) of the Certified Standing Order of the Management, absence without permission and without satisfactory cause amounts to misconduct. Further under Order No. 31 of the Certified Standing Order of the Management there is a provision for punishment of misconduct and under Order No. 31(b) of the Certified Standing Order of the Management there is a provision that the company may at his discretion give the employee the following punishment in lieu of dismissal.

- a) Discharge
- b) Suspend him (without pay) not exceeding 30 days.
- c) Withhold scale increment or debar him from promotion, reduce pay or demote him.
- d) A censure of warning.
- e) Fine.

36. At this point it is relevant to mention here the provision of Section 11-A of the Industrial Disputes Act.

Section – 11(A) : The Section 11(A) of the Industrial Disputes Act reads as follows:-

“Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require”.

37. The Hon’ble Supreme Court has been pleased to observe in a case as reported in 1973 AIR 1227 (Workmen of M/s. Firestone Tyre.... –versus- Managements and others) that :-

“The Act is beneficial piece of legislation enacted in the interest of employees, It is the well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficial rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees has to be preferred. The interpretation must be liberal enough to achieve the legislative purpose”.

38. However the Hon’ble Supreme Court in another case as reported in 2005 (2) SCALE 302 (Mahindra and Mahindra Ltd., -Vs. N.B. Narawade has been pleased to hold as follows:-

“It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgements of this court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may be persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under section 11-A of the Act and reduce the punishment.”

39. In the instant case it is an admitted fact that the 2nd party workman had applied for leave for six months from 27.5.2010 to 28.11.2010 and the same was regretted by the Management, but he remained absent unauthorizedly during that period. Moreover, he also absented from duty after the month of November, 2010 so he was only unauthorizedly absent from duty. Moreover, there is nothing in the service record of the 2nd Party-workman regarding any of his past misconduct.

40. In view of the above discussion the Tribunal finds and holds that the punishment of dismissal awarded to the 2nd party-workman because of his unauthorized absence from duty is highly disproportionate to the gravity of misconduct and it disturbs the conscience of the Court. More-over there is a provision under Order No. 31(b) of the Certified Standing Order of the Management that the Management may in its discretion give its employees other punishment in lieu of dismissal so the Tribunal comes to a conclusion that the 2nd party-workman be awarded a lesser punishment of withholding two scale increments instead of his dismissal from service.

41. After considering all the above facts and circumstances the Tribunal comes to conclusion that the dismissal of the 2nd Party-workman by the Management of Gomardih Dolomite Quarry from service is not legal and justified.

42. Hence, the Issue No. III and IV are answered in favour of the 2nd Party-Workman and against the 1st party-Management.

43. Lastly the Tribunal thinks it proper to discuss the Issue No. 1.

ISSUE NO. I

44. The 1st Party-Management has not stated anything about the maintainability of the reference before this Tribunal. Further there is nothing even to presume that the reference is not maintainable in this Tribunal/Court. Prima-facie on the facts alleged by the 2nd Party-workman in its statement of claim it is amply clear that the dispute raised by the 2nd Party-workman is maintainable in this Tribunal/Court. Therefore this issue is decided in favour of the 2nd Party-Workman in the affirmative.

45. After considering the all the facts and circumstances of the case the Tribunal renders the following order.

ORDER

46. That the termination of service of the 2nd Party-workman namely Sri H.K. Patel by the Management of Gomardih Dolomite Quarry of M/s. Tata Steel Ltd. with effect from 04.02.2012 is not justified and legal and the dismissal order dated 04.02.2012 is set aside.

47. That, the 1st Party-Management is directed to reinstate the 2nd party-workman in the rolls of the Company from the date of termination with-holding two scales increments with cumulative effects.

48. That, the 1st Party-Management is directed to make payment of 50% of the wages to the 2nd party-workman from the date of dismissal till his superannuation (as per service record) with all consequential benefits including Bonus and all retiral benefits.

49. The 1st Party-Management is also directed to implement the Award of the Tribunal within one month from the date of receipt of the copy of the Award after it is published in the official gazette by the appropriate Government.

50. This is Award of this Tribunal.

Dictated & Corrected by me

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2023

का. आ. 1671.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर रेलवे** के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **लखनऊ** के पंचाट (07/2012) प्रकाशित करती है।

[सं. एल-12025/01/2023-आई आर (बी-I)-91]

सलोनी, उप निदेशक

New Delhi, the 12th October, 2023

S.O. 1671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 07/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Norther Railway and their workmen.

[No. L-12025/01/2023-IR(B-I)-91]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 07/2012

BETWEEN

श्री प्रमोद रजक पुत्र श्री अर्जुन रजक 548/443, सूर्य नगर
आर0डी0एस0ओ0 के पीछे मानक नगर - लखनऊ (उ0प्र0)

AND

1. महाप्रबन्धक, उत्तर रेलवे, बड़ौदा हाउस नई दिल्ली।

2. मंडल रेल प्रबन्धक, उत्तर रेलवे, हजरतगंज लखनऊ (उ०प्र०)

3. मे० शाहिद फैजान अहमद एण्ड ब्रदर्स, 654, बेगम का मकवरा, फैजाबाद जनपद फैजाबाद (उ०प्र०)

AWARD

The present industrial dispute has been filed by the workman, Upendra Nath Tiwari before this Tribunal for adjudication as per provisions section 2A of the Industrial Disputes Act, 1947 (14 of 1947).

Accordingly, an industrial dispute No. 07/2012 has been registered on 24.01.2012.

From the perusal of record, the position which emerge out is that after exchange of pleadings by an order dated 21.01.2014 the matter was fixed for filing of workman's evidence; however, when the workman did not file its oral evidence in spite of several opportunities, the management also did not file any evidence.

From the perusal of order sheet, it appears that neither workman nor his authorized representative has appeared to press the case on behalf of the claimant since 07.09.2022.

Accordingly, after hearing Sri U.K. Bajpai, learned authorized representative of the opposite parties and taking into consideration the facts the position which emerges out is that as no oral/documentary evidence has been filed on behalf of the claimant to support his claim, as such, the adjudication case is liable to be dismissed.

Taking into consideration the above said facts as well as the law laid by Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164 Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

Hon'ble Allahabad High Court in the case of District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519 has held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

Thus, taking into consideration the facts on record that in the present case the workman has not filed any oral/documentary evidence in support of his claim, so the same is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

05th September, 2023

Let two copies of this award be sent to the Ministry for publication.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2023

का. आ. 1672.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्कल ग्रामेन बैंक के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (01/2019) प्रकाशित करती है।

[सं. एल-12011/44/2018- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 12th October, 2023

S.O. 1672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 01/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar* as shown in the Annexure, in the industrial dispute between the management of Utkal Grammen Bank and their workmen.

[No. L-12011/44/2018- IR(B.I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 01/2019

Date of Passing Award – 28th July, 2023

Between:

1. The Chairman, Utkal Grammen Bank,
Head Office, Clubpara, Bolangir – 767 001.
2. The General Secretary,
Utkal Grameen Bank Officers Association,
C/o. Utkal Grameen Bank, Head Office,
Clubpara, Bolangir – 767 001

... 1st Party-Managements.

(And)

The General Secretary,
Utkal Grameen Bank Employees' Association,
C/o. Utkal Grameen Bank, Head Office,
Clubpara, Bolangir – 767 001.

... 2nd Party-Union.

Appearances:

None. ... For the 1st Party-Managements.
None. ... For the 2nd Party-Union.

ORDER

In the present case, a reference was received from the appropriate Government vide letter No. L.-12011/44/2018 – IR(B-I) dated 20.12.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, under the following schedule:-

1. Whether the demand of the Union as regards to the formulation of transfer policy by the management of Utkal Grameen Bank in consultation with the recognized union, is legally tenable and/or justified? If not, what relief the workmen are entitled to?
 2. Whether the demand of the union as regards to compensation as per sponsor bank during demonetization work by the management of Utkal Grameen Bank is legally tenable and/or justified? If not, what relief the workmen are entitled to?
 3. Whether the action of the management of Utkal Grameen Bank not filling up unfilled Office Assistant vacancies (Promotion Quota) from amongst the office attendant category as per Promotion Rule 2010 is legal and/or justified? If so, what relief the workmen are entitled to?
2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.
3. Despite directions so given the 2nd Party-Union opted not to file the claim statement.
4. On receipt of the above reference, notice was sent to the 2nd Party-Union on 11.03.2019, on 06.02.2022 and finally on dated 20.03.2023 for appearance and for filing of statement of claim, but the postal article sent to the 2nd Party-Union, referred to above, was not received back. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Union. Despite service of the notice, the 2nd Party-Union opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the Union is not interested in adjudication of the reference on merits.
5. Since the 2nd Party-Union has neither put its appearance nor has he led any evidence so as to prove his cause against the Management. In view of such no claim award is passed by this Tribunal.
6. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2023

का.आ. 1673.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रिजेंद्र मैनेजमेंट प्रा. लिमिटेड के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (31/2022) प्रकाशित करती है।

[सं. एल-12011/20/2022- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 12th October, 2023

S.O. 1673.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 31/2022) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of M/s Rejendra Management Pvt. Ltd and their workmen.

[No. L-12011/20/2022- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 31 OF 2022

Parties: Employers in relation to the management of

M/s Rejendra Management Pvt. Ltd.

AND**Their Workmen**

Appearance:

On behalf of Management : None

On behalf of the Workmen : None

Dated 17th March, 2023

AWARD

None of the parties are found present when the matter is called.

Notice sent to Principal Employer, State Bank of India has returned after due service, but none appeared

Notice sent to the Contractor Employer on two occasions by Registered Post and speed post have returned the shop was found closed.

Notice sent to the Union Contractual Bank Employees Unit Forum, W.B has been duly served as per track report. None appeared on behalf of the Union on calls.

Govt. of India, Ministry of Labour vide Order No. L-12011/20/2022 (I.R.B.I) dated 14.06.2022 has referred the dispute “whether the action of the Management, M/s Rajendra Management Pvt. Ltd. Service provider of Nachida Branch, State Bank of India (West Bengal) in terminating the service of Shri Dipak Bangari, Housing-Keeping staff is legal or justified? If not, what relief the concerned workman is entitled to?” for adjudication by this tribunal.

From the record it appears that since the inception of this Reference Case neither the Management of Bank nor the Union which has espoused the case have put their appearance inspite of due knowledge about the present reference case. The Contractor Employer appears to have closed down its business as per report of postal peon door was found lock intimation left, but still hey could not serve the same.

In view of the above, it can be assumed that the Union which has espoused the dispute is no longer interested to pursue the matter. Accordingly, no dispute award is passed. Reference Case No. 31/2022 is disposed of.

Send copy of Award to the Ministry for doing the needful.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1674.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फेरो स्क्रैप निगम लिमिटेड, दुर्गापुर, के प्रबंधन के संबद्ध नियोजकों फेरो स्क्रैप निगम लिमिटेड कर्मचारी संघ, दुर्गापुर, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- आसनसोल पंचाट (संदर्भ संख्या 31 OF 2023) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.04.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-198-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1674.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31 OF 2023) of the **Central Government Industrial Tribunal cum Labour Court - Asansol** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Ferro Scrap Nigam Limited, Durgapur, and Ferro Scrap Nigam Limited Employees Union, Durgapur**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42025-07-2023-198-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 31 OF 2023

PARTIES: Ferro Scrap Nigam Limited Employees Union, Durgapur.

Vs.

Management of Ferro Scrap Nigam Limited, Durgapur.

REPRESENTATIVES:

For the Union/Workmen: None.

For the Management of FSNL: None.

INDUSTRY: Iron and Steel.

STATE: West Bengal.

Dated: 08.09.2023.

AWARD

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Asansol, vide its Order **No. 1(17)/2023/E** dated 01.06.2023 has been pleased to refer the following dispute between the employer, that is the Management of Ferro Scrap Nigam Limited, Durgapur and their workmen for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Ferro Scrap Nigam Limited, Durgapur Unit in not settling the demand of the revision of wages of the non-executive employees of Ferro Scrap Nigam Limited, Durgapur Unit w.e.f. 01.01.2017, which is pending since long, is justified or not? If not, what relief the non-executive employees are entitled to?”

1. On receiving Order **No. 1(17)/2023/E** dated 01.06.2023 from the Deputy Chief Labour Commissioner (Central), Asansol, Ministry of Labour, Government of India, for adjudication of the dispute **Reference case No. 31 of 2023** was registered on 07.06.2023 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The case is fixed up today for appearance and filing written statement, in default for passing of final order. On repeated calls at 01:20 pm none appeared for the parties.

3. After Notice was issued under registered post on 16.06.2023 Track Consignment Report of India Post indicates that the item was delivered to the addressee on 19.06.2023.

No one has turned up since then. Considering the disinclination of the union representative to proceed with this case, I am of the view that representative of the workmen is not eager to pursue the matter. Industrial Dispute is therefore dismissed in the form of a **No Dispute Award**.

Hence,

ORDERED

that a **No Dispute Award** be drawn up in respect of the above Reference. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1675.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महासचिव, हिंदुस्तान एयरोनॉटिक्स एम्प्लॉइज एसोसिएशन, विमानपुरा पोस्ट, बेंगलुरु; महाप्रबंधक (एचआर) - बीसी, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, बेंगलूर, के प्रबंधन के संबद्ध नियोजकों और महासचिव, हिंदुस्तान एयरोनॉटिक्स एम्प्लॉइज एसोसिएशन, बेंगलूर, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- बेंगलूर पंचाट (संदर्भ संख्या 05/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/58/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1675.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2022) of the Central Government Industrial Tribunal cum Labour Court – Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation **The General Secretary, Hindustan Aeronautics Employees Association, Vimanapura Post, Bangalore; The General Manager (HR) – BC, Hindustan Aeronautics Limited, Bangalore, and The General Secretary, Hindustan Aeronautics Employees Association, Bangalore**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/58/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE, CAMP COURT AT HYDERABAD

DATED : 21st SEPTEMBER 2023

PRESENT : **Shri IRFAN QAMAR**

Presiding Officer

C R No. 05/2022

I Party

The General Secretary,
Hindustan Aeronautics Employees
Association, Vimanapura Post,
BANGALORE – 560 017.

II Party

The General Manager (HR) – BC,
Hindustan Aeronautics Limited,
Bangalore Complex, P B No. 1785,
BANGALORE – 560 017.

Appearances

I Party : **L Muralidhar Peshwa**

Advocate

II Party : **Pradeep S Sawkar**

Advocate

1. The Government of India, Ministry of Labour vide Order No. L-42011/1/2022-IR(DU) dated 19.01.2022 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10

of the Industrial Disputes Act, 1947 (hereinafter referred as “The Act”) (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

“Whether the action of the management of HAL, Bangalore in modifying the medical policy as raised by Hindustan Aeronautics Employees Association (HAEA) vide letter dated 15.11.2021 is proper, legal and justified? If not, what relief(s) the disputant workers is entitled to?”

2. After Registering the matter notices were issued to parties who appeared. During the pendency of Industrial Dispute 1st Party Union General Secretary has filed Memo of Withdrawal alongwith Affidavit stating that the management has issued a letter dated 30.08.2023 reviewing of medical facilities, hence, they would be withdrawing the present dispute.

3. Perused the records, the Union General Secretary has filed Memo dated 13.09.2023 in the present matter voluntarily. With the prayer that this Court may graciously be pleased to allow the appellant to withdraw the case in the present matter of case No. CR No. 05/2022 as the Respondent Organisation would be able to extend Medical facilities to Dependent Parent of employees. The Respondents have submitted No Objection in that regard. Therefore, in view of the above Memo is allowed. No Claim Award is passed. Transmit.

AWARD

The Reference is answered in terms of the Memo dated 13-09-2023 accordingly.

(Dictated to Secretary to Court, transcribed by him, corrected and signed by me on 21st September 2023)

IRFAN QAMAR, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1676.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक (एचआर) - बीसी, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, बेंगलूर, के प्रबंधन के संबद्ध नियोजकों और महासचिव, हिंदुस्तान एयरोनॉटिक्स एम्प्लॉइज एसोसिएशन, बेंगलूर, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- बेंगलूर पंचाट (संदर्भ संख्या 02/2023) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/365/2022-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1676.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2023) of the Central Government Industrial Tribunal cum Labour Court – Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation **The General Manager (HR) – BC, Hindustan Aeronautics Limited, Bangalore, and The General Secretary, Hindustan Aeronautics Employees Association, Bangalore**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/365/2022-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE, CAMP COURT At HYDERABAD**

DATED : 21st SEPTEMBER 2023

PRESENT : **Shri IRFAN QAMAR**
Presiding Officer

C R No. 02/2023**I Party**

The General Secretary,
Hindustan Aeronautics Head Office
Employees Association, 15/1, Cubbon
Road, HAL Corporate Office,
BANGALORE – 560 001.

II Party

The General Manager (HR) – BC,
Hindustan Aeronautics Limited,
Corporate Office,
BANGALORE – 560 017.

Appearances

I Party : Self
II Party : Self

1. The Government of India, Ministry of Labour vide Order No. L-42011/365/2022-IR(DU) dated 19.12.2022 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as “The Act”) (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

“Whether the demand raised by Hindustan Aeronautics Head Office Employees Association, Bangalore against the management of Hindustan Aeronautics Limited (HAL), Bangalore over the issue of unilaterally modifying the medical policy which was in practice for a long time and will adversely affect the workmen, is proper, legal and justified? If yes, what relief the union concerned is entitled to?”

2. After Registering the matter notices were issued to parties who appeared. During the pendency of Industrial Dispute 1st Party Union General Secretary has filed Memo of Withdrawal alongwith Affidavit stating that the management has issued a letter dated 30.08.2023 reviewing of medical facilities, hence, they would be withdrawing the present dispute.

3. Perused the records, the Union General Secretary has filed Memo dated 11.09.2023 in the present matter voluntarily. The Respondents have submitted no Objection in that regard. Therefore, in view of the above Memo is allowed. No Claim Award is passed. Transmit.

AWARD

The Reference is answered in terms of the Memo dated 11-09-2023 accordingly.

(Dictated to Secretary to Court, transcribed by him, corrected and signed by me on 21st September 2023)

IRFAN QAMAR, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1677—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप. अधीक्षक पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण,हम्पी सर्कल, कमालपुर पोस्ट, होसपेट, बेल्लारी, के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, भारतीय पुरातत्व सर्वेक्षण कार्मिक संघ, कमलापुर, कमलापुर पोस्ट, होसपेट, बेल्लारी, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- बेंगलूर पंचाट(संदर्भ संख्या 03/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023को प्राप्त हुआ था।

[सं. एल-42011/172/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1677.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2016) of the Central Government Industrial Tribunal cum

Labour Court – Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation **The Dy. Supdt. Archaeologist, Archaeological Survey of India, Hampi Circle, Kamalapur Post, Hospet, Bellary, and The President, Archaeological Survey of India Karmikara Sangha, Kamalapur, Kamalapur Post, Hospet, Bellary**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/172/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE, CAMP COURT At HYDERABAD

DATED : 21st SEPTEMBER 2023

PRESENT : **Shri IRFAN QAMAR**
Presiding Officer

C R No. 03/2016

I Party

The President,
Archaeological Survey of India Karmikara Sangha,
Kamalapur, Kamalapur Post, Hospet,
BELLARY – 583 221.

II Party

The Dy. Supdt. Archaeologist,
Archaeological Survey of India,
Hampi Circle,
Kamalapur Post, Hospet,
BELLARY – 583 221.

Appearances

I Party : **Sh. Muralidhara**

Advocate

II Party : **Sh. B Satish**

Advocate

1. The Government of India, Ministry of Labour vide order No. L-42011/172/2015-IR(DU) dated 29.12.2015 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as “The Act”) (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

“Whether the action of the management of Archaeological Survey of India, Kamalapur, Hampi, represented by its Dy. Supdt. Archaeologist, in not implementing the 1/30th minimum pay scale as was directed in OM No. 49014/2/86-Estt(C) dated 07.06.1988 to the casual workers working under ASI, Kamalapur is fair, legal and justified? If not, to what relief the said workmen are entitled to?”

2. After Registering the matter notices were issued to parties who appeared. During the pendency of Industrial Dispute 1st Party Union General Secretary has filed Memo of Withdrawal alongwith Affidavit stating that in another matter the Hon’ble High Court of Karnataka, Dharwad Bench has awarded 1/30th Minimum Pay Scale. Hence, the above reference may be treated as “NOT PRESSED” in the interest of justice.

3. Perused the records, the Union General Secretary has filed Memo dated 05.09.2023 in the present matter voluntarily. The Respondents have submitted no Objection in that regard. Therefore, in view of the above Memo is allowed. No Claim Award is passed. Transmit.

AWARD

The Reference is answered in terms of the Memo dated 5-09-2023 accordingly.

(Dictated to Secretary to Court, transcribed by him, corrected and signed by me on 21st September 2023)

IRFAN QAMAR, Presiding officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1678.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान केबल्स लिमिटेड, हैदराबाद, के प्रबंधन के संबद्ध नियोजकों और महासचिव, हिंदुस्तान कैजुअल वर्कर्स यूनियन, हैदराबाद इकाई, हैदराबाद, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 10/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.10.2023 को प्राप्त हुआ था।

[सं. एल -40011/136/2017-आईआर(डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 13th October, 2023

S.O. 1678.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2018) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Hindustan Cables Ltd., Hyderabad,, and The General Secretary, Hindustan Casual Workers Union, Hyderabad Unit, Hyderabad**, which was received along with soft copy of the award by the Central Government on 12.10.2023.

[No. L-40011/136/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR

Presiding Officer

Dated the 11th day of September, 2023

INDUSTRIAL DISPUTE No. 10/2018

Between:

The General Secretary,

Hindustan Casual Workers Union,

Hyderabad Unit,

Hyderabad – 500 001.

.....Petitioner

AND

The General Manager,

Hindustan Cables Ltd.,

Hyderabad – 500 001.

... Respondent

Appearances:

For the Petitioner : Representative

For the Respondent : Sri B. Shiva Kumar & B. Bhushan, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-40011/136/2017-IR(DU) dated 7.12.2017 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Hindustan Cables Ltd., and their workman. The reference is,

SCHEDULE

“Whether there is employer-employee relationship between the 84 erstwhile contract labour of HCL, with HCL Management during the period from 1982/84 to 31.8.2002 or not? (ii) from which date, the master & servant relationship got established between the HCL Management and the 84 casual workers whether it was from 1982/84 or from 1/9/2002? (iii) Whether the demand made by the 84 casual workers (who were retrenched w.e.f. 31/1/2017) to include their service rendered by them with the Contractors under HCL, Hyderabad from 1982/84 to 31/8/2002, for payment of retrenchment compensation by the HCL, Hyderabad or not? If not, to what relief they are entitled?”

The reference is numbered in this Tribunal as I.D. No. 10/2018 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for Petitioner's evidence. Respondent present. Record reveals that the case is posted for Petitioner's evidence since April, 2020, but since then no appearance is made on behalf of Petitioner. In absence of Petitioner's evidence, the case is dismissed and a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 11th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1679.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक (दूरसंचार), भारत संचार निगम लिमिटेड, (बीएसएनएल), करीमनगर तेलंगाना; उपमंडल अधिकारी (दूरसंचार), भारत संचार निगम लिमिटेड, (बीएसएनएल), पेद्दापल्ली, गोदावरीखानी, तेलंगाना, के प्रबंधन के संबद्ध नियोजकों और श्री एम.अदम, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद पंचाट(संदर्भ संख्या 92/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.10.2023 को प्राप्त हुआ था।

[सं. एल-40012/01/2018-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1679.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 92/2018) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager (Telecom), Bharat Sanchar Nigam Ltd., (BSNL), Karimnagar Telangana ; The Sub-Divl. Officer (Telecom), Bharat Sanchar Nigam Ltd., (BSNL), Peddapalli, Godavarikhani, Telangana, and Shri M. Adam, Worker**, which was received along with soft copy of the award by the Central Government on 12.10.2023.

[No. L-40012/01/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

Present: - Sri IRFAN QAMAR

Presiding Officer

Dated the 15th day of December, 2022

INDUSTRIAL DISPUTE No. 92/2018

Between:

Sri M. Adam,

C/o Telephone Exchange, BSNL

Jyothinagar, Peddapalli Distt. (TS)

Telengana – 505215.

.....Petitioner

AND

1. The General Manager (Telecom),
Bharat Sanchar Nigam Ltd., (BSNL)
Karimnagar Telengana – 505 001.

2. The Sub-Divl. Officer (Telecom)
Bharat Sanchar Nigam Ltd.,(BSNL)
Sub.Divl.Office Peddapalli, Godavarikhani
Peddapalli Distt. Telengana – 505209.

... Respondents

Appearances:

For the Petitioner : M/s. V. Venkateshwar Rao & T. Gundappa, Advocates

For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-40012/ 01/2018-IR(DU) dated 30.7.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

“Whether regularization is Industrial Dispute under the I.D. Act, 1947. If yes, whether the demand of the workman Sri M. Adam who was working w.e.f. 22.11.2000 as casual mazdoor in the Bharat Sanchar Nigam Ltd., (BSNL), Karimnagar, Telengana for regularizing of services is legal and justified? If yes, what relief this workman is entitled to and what directions are necessary in the case?”

The reference is numbered in this Tribunal as I.D. No. 92/2018 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Respondent present. Record reveals that the case is posted for filing of claim statement and Petitioner is absent since 6.12.2019. Despite sufficient number of opportunities has been granted to him, Petitioner did not turn up. It appears that he does not want to pursue the case. Hence, petition is dismissed for want of prosecution by Petitioner and a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 15th day of December, 2022.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1680.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सचिव, तंबाकू बोर्ड, गुंटूर; क्षेत्रीय प्रबंधक, तम्बाकू बोर्ड, गुंटूर, के प्रबंधन के संबद्ध नियोजकों और श्रीमती टी. गीता माधुरी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 248/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.10.2023 को प्राप्त हुआ था।

[सं. एल-42012/145/2014-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1680.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 248/2014) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, Tobacco Board, Guntur ; The Regional Manager, Tobacco Board, Guntur, and Smt. T. Geetha Madhuri, Worker**, which was received along with soft copy of the award by the Central Government on 12.10.2023.

[No. L-42012/145/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: Sri IRFAN QAMAR
Presiding Officer

Dated the 29th day of September, 2023**INDUSTRIAL DISPUTE No. 248/2014**

Between:

Smt. T. Geetha Madhuri,

D.No.22-48, Srinivasa Rao Thota,

12th Lane, 60 Feet Road, Near Tirupathamma Temple,

Peerlachavadi.

Guntur – 522004.

..... Petitioner

AND

1. The Secretary,
Tobacco Board,
G.T. Road,
Guntur – 522004.

2. The Regional Manager,
Tobacco Board,
G.T. Road,
Guntur – 522004.

.... Respondents

Appearances:

For the Petitioner : Sri Y. Ranjeeth Reddy , Advocate

For the Respondent: M/s. J. V. Prasad & K. Ajay Kumar, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-42012/145/2014-IR(DU) dated 2.12.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Tobacco Board and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Tobacco Board, Guntur, Andhra Pradesh in terminating the service of Smt. T. Geetha Madhuri, Group-D w.e.f. 25.5.2013 is legal and justified? If not, to what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 248/2014 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

It is submitted that the petitioner made an application on 05.04.2010 for appointment of Daily Wage Group-D post to the 1st respondent and as per the advice of the 1st respondent, the petitioner was joined as Daily wage Group-D on 19.04.2010 in the 2nd Respondent's office on payment of Rs.3,600/- per month and submitted joining report and the 2nd respondent forwarded the joining report along with application of appointment to the 1st Respondent for needful action. The petitioner worked continuously without any break, to the entire satisfaction of superior officers. There were no complaints of what so ever nature against the petitioner in her entire service. It is submitted that the petitioner made an application to the 2nd Respondent to increase the wages on par with other state governments / Central Government and the 2nd Respondent forwarded the application to the Chairman, Tobacco Board, Guntur for consideration on 22.03.2011. Accordingly the 1st respondent issued office order dated 30.12.2011 enhancing the wages from Rs. 3,600/- to Rs.5,354/- per month of Group-D Sweeper/Gardener working on consolidated wages in Tobacco Board w.e.f.01.04.2011 and the petitioner received the enhanced wage arrears for 9 months from 01.04.2011 to 31.12.2011 of Rs.15,611/- on 11.01.2012 vide cheque No.149372 from Rs.3,600/- to Rs.5,354/- per month to salary, used to sign on the vouchers at the time of taking salary and not extended any benefits like provident fund and ESI, etc.. It is further submitted that while so the respondents terminated the petitioner from service by oral order dated 25.05.2013, without conducting any enquiry, notice pay, compensation and conducting any enquiry that is arbitrary, illegal, unjust and contrary to the provisions of Industrial Disputes Act. It is submitted that the petitioner gave a representation dated 03.06.2013 to the respondents requesting for reinstatement, but there is no response from the respondents. It is submitted that the petitioner gave representation dated 25.11.2013 to the Assistant Labour Commissioner (Central), Vijayawada, requesting to intervene the matter and to direct the respondents to reinstate the petitioner in to service. It is submitted that the Assistant Labour Commissioner (Central), Vijayawada issued notices to the respondents for joint meetings / conciliation proceedings and the respondents refused to reinstate the petitioner in to service. After several meetings the Assistant Labour Commissioner (Central), Vijayawada closed conciliation meetings and sent the failure report to the Government of India. It is submitted that the action of the respondent by terminating the petitioner from service w.e.f. 25.11.2013 is illegal and unjustified. The termination is violation of the Sec 25 F, G and H of the Industrial Dispute Act. The respondent has not given any notice nor retrenchment compensation to the petitioner at the time of termination. Several of her juniors, are still working. The action of the respondent in terminating the petitioner and continuing the juniors is illegal and arbitrary. The last drawn salary of the petitioner was Rs. 5,354/- per month. It is submitted that the petitioner never asked for regularization. It is submitted that entire family is depending on the petitioners income and after termination of the petitioner, they are facing untold problems and hardship. The petitioner is the only bread earner in the family. It is submitted that the petitioner is unemployed and in spite of best efforts made, she is unable to secure any alternative employment till today. It is submitted that the Government of India sanctioned 140 posts of MTS to Tobacco Board and out of the 140 posts of MTS 44 posts are vacant as on 31.03.2014. It is therefore prayed to this Hon'ble Tribunal to pass an Award directing the respondents to reinstate the petitioner into service with continuity of service, with full back wages and with all other attendant benefits.

3. **Respondent filed counter denying the averments of the Petitioner as under:**

It is submitted that the Tobacco Board is formed in the year 1975 by an Act of Parliament with an object to regulate the production and marketing of FCV tobacco and work for the development of tobacco industries and welfare of the tobacco farmers. The Tobacco Board is a Government body constituted under a separate statute to undertake statutory function of development and growth of tobacco. The Board is not a profit making organization and was established for the welfare of the tobacco growers. The Board is governed by the rules and regulations prescribed by the Central Government. It is therefore submitted that the respondent-Board is neither an "industry" as defined u/s. 2(j) of the Industrial Disputes Act nor the petitioner is a workman as defined u/s. 2(s) of the Industrial Disputes Act, 1947. It is therefore submitted that the above case is not maintainable either in law or on facts. It is further submitted that the petitioner was engaged to work in Regional Manager Office, Guntur on daily wage basis as a 'Group-D', and she was not given any appointment order to the said extent. The Respondent-Board has enhanced the wages from time to time. It is submitted that the petitioner's services were neither regularized nor confirmed. The said engagement is purely on temporary basis. The Board reviewed the work load of temporary Group-D' in all the offices including the office of the Regional Manager, Guntur, and decided to withdraw the services of temporary 'Group-D' where the work load is less. Accordingly, the petitioner was asked not to attend work w.e.f. 25-05-2013. It is further submitted that no junior to the petitioner is engaged / absorbed in the Respondent office without following the procedure prescribed by the Central Government. Therefore, the petitioner is not entitled to any relief sought in the claim statement. It is submitted that the petitioner joined as daily wage Group-D on temporary basis on 19-04-2010 on payment of Rs.3,600/- per month. It is further submitted that the Respondent-Board receives representations from individuals directly requesting to provide some work on daily wage basis temporarily in the Respondent-Board. It is submitted that the Respondent-Board also receives applications through the Regional Managers, Auction Superintendents of the Board for temporary work in the Board. The Head Office, the Regional Managers/ Auction Superintendents engages the persons for the petty works/ temporary works such as gardening, sweeping, watering etc. for the short periods on daily wage basis. As and when the works are completed, the persons engaged for the works on daily wages are withdrawn from the works. Therefore, at the time of allowing to work, the Board never issues any kind of appointment orders to the persons engaged on daily wage basis and the Board never gives any assurance for their continuance in their service. The persons engaged on daily wage basis for temporary works are withdrawn after completion of the said work. It is submitted that the Board has not given any appointment order to the petitioner engaging her on daily wage basis and not given any assurance for her continuance in the Board. The petitioner has no right to claim regular/ continuance service in the Board. It is submitted that the Respondent-Board enhanced the wages of casual workers from time to time based on the Government Orders of Central/State Labour Commissions. Accordingly, the Respondent-Board enhanced the wages to the casual workers engaged in the Offices of Tobacco Board from Rs.3,600/- to Rs.5,354/- w.e.f. 01-04-2011 to Group-D/Sweeper/Gardener vide office order dated 30-12-2011. The enhanced wages were also paid to the petitioner with arrears. It is submitted that the Head Office reviewed the workload of temporary Peon Watchman, Sweepers etc.. Further, the required qualification for the post of MTS is 10th class to its equivalent. As such, the Chairman Executive Director Secretary or any other officer of the Board has no power to provide employment on regular basis without following the procedure of Recruitment Regulations framed by the Government of India. Therefore, the petitioner is not entitled for the relief sought in this case, and is liable to be dismissed with costs.

4. Petitioner examined himself as WW1 in support of his claim and marked photocopies of documents Ex.W1 to W11. Respondent examined Sri K. Satyanarayana as MW1.

5. Heard arguments of Learned Counsel for the Petitioner. Respondent did not turn up for argument. Perused record.

6. **On the basis of pleadings and rival contentions of both the parties, following points emerge for determination:-**

I. Whether the action of the Respondent management of Tobacco Board, Guntur, Andhra Pradesh in terminating the services of Smt. T. Geetha Madhuri, group-D is legal and justified?

II. Whether the termination of the petitioner from service is in violation of the provision of Sec.25F, 25G and 25H of I.D. Act, 1947?

III. To what relief the Petitioner is entitled for?

FINDING:

7. **Points No.I & II:** Since both the points are co-related, hence are being dealt together. The Petitioner contended that she joined the service as a daily wage Group-D post in the 2nd Respondent's office on 19.4.2010 on payment of Rs.3,600/- per month and later on it was increased to Rs.5354/- p.m. The petitioner worked continuously without any break, to the entire satisfaction of superior officers and there were no complaints of what so ever nature against the petitioner in her entire service. But the Respondent terminated the petitioner from service by oral order

dated 25.05.2013, without conducting any enquiry, notice pay, compensation and conducting any enquiry is arbitrary, illegal, unjust and contrary to the provisions of Industrial Disputes Act.

8. On the other hand, Respondent has refuted the allegations of the Petitioner against her termination.

9. The burden of proof to prove the fact that the termination of the Petitioner from service by the Respondent was in violation of the provisions of Sec.25F and 25 G of the I.D. Act, 1947 rests upon the shoulder of the Petitioner.

In this regard, relevant decisions of Hon'ble Apex Court are given as under:-

a. In the case of **GM., BSNL and others V. Mahesh Chand AIR 2008 SC (Supp) 1328**, wherein the Hon'ble Apex Court have held,

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

b. In the case of **Range Forest Officer Vs. S T Hadimani AIR 2002 SC page 1147**, wherein Hon'ble Apex Court have held,

"the onus lies upon claimant to show that he had in fact worked for 240 days in a year – In absence of proof of receipt of salary or wages record of appointment, filing of an affidavit by workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

c. In the case of **Essen Deinki Vs. Rajiv Kumar, AIR 2003 SC 38** the Hon'ble Apex Court have held,

"It was for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months' period."

d. In the case of **Mohan Lal v. Management, BEL 1981 SCC P. 225**, Hon'ble Apex Court held, "

Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

e. The Hon'ble Apex Court in this case also laid down the principle of how to count 240 days of service within one year and held:

"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service period of 240 days during the period of 12 calendar months for counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

10. Admittedly Petitioner was engaged in Respondent office as daily wager Group-D workman and terminated from service on 25.5.2013. Petitioner has taken the plea that her termination from service was in violation of Sec.25F and 25G of I.D. Act, 1947. In order to prove her plea, the Petitioner has filed affidavit in chief of WW1 wherein she has supported the averments of the petition. The witness WW1 was cross examined by the Respondent counsel wherein she states that "Daily I used to sign in the attendance register when I reported to duty only. It is not correct to say that as and when work is available I used to report duty in the office, but not daily." Further, witness in her cross examination states that "I am not aware of the reason of closure of the office at Guntur. I am also not aware about the closure of the Respondent Board at Guntur till my termination. It is true that I am discharging my duties on daily wage basis."..... "I have given appointment letter by the Respondent. I have not filed the appointment letter in this case." After confronting Ex.W2, the witness admitted that it is her joining report but not appointment letter. Prior to Ex.W2 she was not issued any letter from the office of Respondent. Thus, from the statement of WW1 in cross examination, it is clear that Petitioner workman joined office as daily wager workman and no appointment letter was issued to her. The document Ex.W2 which has been referred by the witness is only a joining report. Thus, it manifest that she was not appointed against any regular post and she was working as a daily wager in the Respondent office. The Petitioner workman also failed to produce any evidence on record to prove the fact that she had worked 240 days in 12 months of a calendar year just preceding the date of termination from service. Therefore, protection from retrenchment under the provision of Sec.25F, 25G and 25H, is not available to the Petitioner against the impugned termination order.

11. On the other hand, Respondent contended that the Board has not given appointment letter to the Petitioner engaging her on daily wage basis and not given any assurance for her continuance in the Board. Petitioner has no right to claim regular service in the Board. Further, it is contended that the Petitioner joined as daily wage Group-D in 2nd Respondent's office on 19.4.2010 on payment of Rs.3600/- p.m. It is contended that that Respondent board receives representations from individuals directly to provide some work on daily wage basis. Respondent engages the persons for the petty works/temporary works and as and when the works are completed, the persons engaged for the works on daily wages are withdrawn from the works. Further, it is contended that the Head Office reviewed the workload of temporary Group-D posts in all the offices including the office of the Regional Manager, Guntur and decided to withdraw the services of temporary Group-D, where the work load is less. As the work in Regional Managers' office is found less, the Petitioner was informed not to attend duties from 25.5.2013. However, on 21.4.2013 she was informed that her services were not required from 25.5.2013. It is also submitted that the Board has recruitment regulations for all the posts including the post of MTS. Therefore, the Chairman/Executive Director/Secretary or any other officer of the Board has no power to provide employment on regular basis without following the procedures of Recruitment Regulations framed for specific posts by the Government of India. In support of said contention Respondent has examined witness MW1 who has supported the contentions made in the counter wherein MW1 states in his chief affidavit that the Petitioner joined as daily wagger Group-D on temporary service on 19.4.2010 on payment of Rs.3600/-p.m. The Head Office, Regional Manager, Guntur engages the person for the petty and temporary works such as gardening, sweeping, watering etc., for the short periods on daily wage basis. As and when the works are completed, the persons engaged for the works on daily wages are withdrawn from the works. The witness MW1 was cross examined by the Petitioner's counsel but the facts stated in chief has not been contradicted in the cross examination by the Petitioner. Therefore, the aforesaid statement of the witness MW1 in chief examination remained uncontraverted.

12. Therefore, in view of the evidence, of both the parties it is conclusive that Petitioner workman had joined the service on daily wages in 2nd Respondent's office and she was not working against any regular post and she was not issued any appointment letter meaning thereby that she has not gone under the recruitment process as per regulation prescribed for recruitment in the Respondent organization before joining the service. Further she failed to prove the required number of working days i.e., 240 days in 12 months in a calendar year just preceding from the date of termination for availing the protection from retrenchment under the provision of Sec.25F of I.D. Act, 1947.

13. WW1 in her cross examination admitted the fact that she used to sign in attendance register she reported to duty only. It means she was not working continuously and as and when exigencies of work arise she was engaged for work by the Respondent organization. Thus, the contention of the Respondent that the Head Office, the Regional Manager engages the workman for petty/temporary works such as gardening, sweeping, watering etc., for short period on daily wages basis and as and when works are completed the persons engaged for the work on daily wages are withdrawn is acceptable in the absence of any contrary evidence against it from Petitioner side. Therefore, it can not be said that Petitioner's termination from service was in violation of the provisions of Section 25F, 25G and 25H of the I.D. Act, 1947. In view of fore gone discussion, I am of the considered opinion that the action of the Respondent in terminating the services of the workman Smt. T. Geetha Madhuri is legal and justified.

Thus, Point No.I & II are decided accordingly.

14. **Point No.III:** In view of the finding given in Point Nos. I & II, the Petitioner is not entitled to get any relief and this petition is found to be baseless, hence, liable to be dismissed.

Result:

The action of the management of Tobacco Board, Guntur, Andhra Pradesh in terminating the service of Smt. T. Geetha Madhuri, Group-D w.e.f. 25.5.2013 is legal and justified. Petition stands dismissed. The workman is not entitled to any relief as prayed for.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 29th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Petitioner

WW1: Smt. T. Geetha Madhuri

Witnesses examined for the

Respondent

MW1: Sri K. Satyanarayana

Documents marked for the Petitioner

- Ex.W1: Photostat copy of application to the Secretary, Tobacco Board, Guntur dt. 5.4.2010
Ex.W2: Photostat copy of joining report dt.19.4.2010
Ex.W3: Photostat copy of letter from R2 to R1 dt. 19.4.2010
Ex.W4: Photostat copy of lr. from R2 to Chairman, Tobacco Board, Guntur
Ex.W5: Photostat copy of office order dt.30.12.2011
Ex.W6: Photostat copy of receipt dt.11.1.2012
Ex.W7: Photostat copy of representation to the Respondent dt.3.6.2013
Ex.W8: Photostat copy of representation to the ALC©, Vijayawada
Ex.W9: Photostat copy of minutes of conciliation dt.12.5.2014
Ex.W10:Photostat copy of failure report by the ALC(C), Vijayawada dt.28.8.2014
Ex.W11:Photostat copy of information under RTI Act dt.30.4.2014

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1681.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, मैसर्स बीएसएनएल, खम्मम, तेलंगाना: उप-विभागीय अधिकारी (फ़ोन), मैसर्स बीएसएनएल, कोठागुडेम, खम्मम तेलंगाना, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री वी. यदागिरि, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 35/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.10.2023 को प्राप्त हुआ था।

[सं. एल-40012/15/2017-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1681.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2018) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Telecom District, M/s. BSNL, Khammam, Telangana: The Sub-Divisional Officer (Phones), M/s. Bisanl, Kothagudem, Khammam Telangana, and Shri V. Yadagiri, Worker**, which was received alongwith soft copy of the award by the Central Government on 12.10.2023.

[No. L-40012/15/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 13th day of September, 2023

INDUSTRIAL DISPUTE No. 35/2018

Between:

Sri V. Yadagiri

S/o Durgaiah,

H.No.10-1-16/1, Sh. Ramanjaneya Colony,

Kothagudem, Khammam District.

Telengana – 507 101.

.....Petitioner

AND

1. The General Manager,
Telecom District, M/s. BSNL
Khammam District,
Telengana – 507101.

2. The Sub-Divisional Officer (Phones),
M/s. BSNL, Kothagudem,
Khammam District
Telengana – 507 101.

... Respondents

Appearances:

For the Petitioner : None

For the Respondent: Sri K. Shankar Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-40012/ 15/2017-IR(DU) dated 18.1.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL AP Circle and their workman. The reference is,

SCHEDULE

“Whether the action of the Management of M/s. Bharat Sanchar Nigam Limited, Kothagudem in terminating the services of Sh. V. Yadagiri is legal and justified? If not, what the relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 35/2018 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Respondent present. Record reveals that notice served on Petitioner but none present on behalf of Petitioner. In absence of Petitioner and claim statement, the case is dismissed and a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 13th day of September, 2023.

IRFAN QAMAR, Presiding Presiding

Appendix of evidence

Witnesses examined for the

Petitioner

NIL

Witnesses examined for the

Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1682.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, मैसर्स बीएसएनएल, खम्मम, तेलंगाना: उप-विभागीय अधिकारी (फोन), मैसर्स बीएसएनएल, कोठागुडेम, खम्मम, तेलंगाना, के प्रबंधन के संबद्ध नियोजकों और श्री कोर्रम वीरा भद्रम, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 47/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.10.2023को प्राप्त हुआ था।

[सं. एल-40012/14/2017-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1682.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 47/2018) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Telecom District, M/s. BSNL, Khammam, Telangana: The Sub-Divisional Officer (Phones), M/s. BSNL, Kothagudem, Khammam, Telangana, and Shri Korram Veera Bhadrām, Worker**, which was received along with soft copy of the award by the Central Government on 12.10.2023.

[No. L-40012/14/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**Present: - **Sri IRFAN QAMAR****Presiding Officer**Dated the 13th day of September, 2023**INDUSTRIAL DISPUTE No. 47/2018**

Between:

Sri Korram Veera Bhadrām,

S/o Sh. Gaderaju,

H.No.2-1-45/1, Budidha Gadda,

Kothagudem, Khammam District.

Telangana – 507 101.

.....Petitioner

AND

1. The General Manager,
Telecom District, M/s. BSNL
Khammam District,
Telangana – 507101.

2. The Sub-Divisional Officer (Phones),
M/s. BSNL, Kothagudem,
Khammam District
Telengana – 507 101. ... Respondents

Appearances:

For the Petitioner : None

For the Respondent: Sri K. Shankar Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-40012/14/2017-IR(DU) dated 29.1.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL AP Circle and their workman. The reference is,

SCHEDULE

“Whether the action of the Management of M/s. Bharat Sanchar Nigam Limited, Kothagudem in terminating the services of Sh. K. Veerabhadram is legal and justified? If not, what the relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 47/2018 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Respondent present. Record reveals that notice served on Petitioner but none present on behalf of Petitioner. In absence of Petitioner and claim statement, the case is dismissed and a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 13th day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1683.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बेस्ट एंड क्रॉम्पटन इंजीनियरिंग प्रा. लिमिटेड ; भारतीय रिजर्व बैंक नोट मुद्रण लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और श्री गौतम पॉल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या CGIT.13 OF 2004) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-16011/6/2003 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1683.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. CGIT. 13 OF 2004) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Best & Crompton Engineering Pvt. Ltd. ; Bharatiya Reserve Bank Note Mudran Ltd., and Shri Gautam Paul, Worker**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-16011/6/2003 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer

REF. NO. 13 OF 2004

Parties: Employers in relation to the management of

Best & Crompton Engineering Pvt. Ltd.

&

Bharatiya Reserve Bank Note Mudran Limited

AND

their Workman

Appearance:

On behalf of the Employers: Absent

On behalf of the Workman: Himself

Dated: 18th day of July, 2023

AWARD

By order No.L-16011/6/2003 –IR (DU) dated 02-04-2004 the Central Govt., Ministry of Labour in exercise of the power conferred under section 10(1) (d) and (2A) of the Industrial Dispute Act, 1947 has referred the following issue for adjudication :

“Whether the service period of Sh. Gautam Pal engaged as Store Keeper by M/s. Best & Crompton Engineering Ltd. in the establishment of Bharatiya Reserve Bank Note Mudran Ltd. be treated from 01-04-1995 to 31-03-2002 or 31-05-2003 and what are the termination benefits he is entitled to?”

But subsequently, in compliance of order passed in writ petition no.15223 of 2004 dated 27-08-2008, the Central Govt, Ministry of Labour issued a corrigendum order of reference dated 10-10-2008 and which read as follows:-

“Whether it is a fact that Sri Gautam Pal was employed by M/s. Best & Crompton Engineering Ltd. in the establishment of Bharatiya Reserve Bank Note Mudran Ltd. w.e.f. 01-01-1993? If so, whether the action of the management in terminating services of Sri Gautam Paul is legal and justified? If not, to what relief the workman Sri Gautam Paul is entitled?”

The fact giving rise to such dispute in brief is that Bharatiya Reserve Bank Note Mudran Ltd. had awarded a contract to M/s. Best & Crompton Engineering Ltd., for designing engineering, manufacture, supply, erection, testing and commissioning of Shop Illumination for Main Press under Phase-II at N.N.P.P., Salboni. vide L.Y. No. 2010/SAL/Shop Illumination/Phase-II/97-98 dated 05-06-1997. The said work was successfully commissioned or completed on 31-05-2000.

It is the case of the workman that M/s. Best & Crompton Engineering Ltd. in order to carry out such contract work at N.N.P.P., Salboni, engaged the concerned workman Sri Gautam Paul as a Store Keeper. That even after the completion of the contract job at N.N.P.P., Salboni, M/s. Best & Crompton Engineering Ltd. retained the concerned workman Sri Gautam ,Pal and posted him at its office at 50, Chowranghee Square, Kolkata. Later, he was deputed to Salboni site with specific job assignment vide letter dated 01-03-2001, but after March, 2002 he was not paid salary. That he was illegally terminated from the service without making payment of statutory dues and retrenchment benefits.

It is the case of the workman that for non-payment of his wages he filed a complaint before the A.L. C.-Central on 28-02-2003. That he was offered a meagre amount by his employer and which he refused vide his letter dated 21-04-2003. Then he raised an industrial dispute before Regional Labour Commissioner, Central. That when the conciliation failed then A.L. C. referred the matter to the Ministry of Labour for necessary reference.

Record shows, M/s. Best & Crompton Engineering Ltd. had put its appearance, but subsequently it has stopped pursuing the matter and even failed to file its written statement. Therefore it has been proceeded exparte.

Bharatiya Reserve Bank Note Mudran Ltd. had put appearance and filed its written statement, where it has alleged that there exists no relationship of employer and employee between it and the concerned workman as the concerned workman was an employee of its contractor M/s. Best & Crompton Engineering Ltd., which it has engaged to do a specific work in the year 1997. The said work having completed on 31-05-2000, it has no relationship with M/s. Best & Crompton Engineering Ltd. Therefore, it has prayed for expunging its name from the reference. But, ultimately the Bharatiya Reserve Bank Note Mudran Ltd. too has failed to pursue the matter. Consequently, the present reference has proceeded exparte Bharatiya Reserve Bank Note Mudran Ltd.

The concerned workman nowhere in his written claim statement or in his evidence has sought any relief from Bharatiya Reserve Bank Note Mudran Ltd. or claimed that he was employed by Bharatiya Reserve Bank Note Mudran Ltd. at its Salboni office as a store keeper. In fact the documents which have come on record show the concerned workman Sri Gautam Pal was engaged by M/s. Best & Crompton Engineering Ltd. as a store keeper at its work site at NNPP Salboni. There having no relationship of employer and employee between Bharatiya Reserve Bank Note Mudran Ltd. and the concerned workman, this Tribunal is of view Bharatiya Reserve Bank Note Mudran Ltd. has been wrongly impleaded as a party to this proceeding.

However, the concerned workman to substantiate his claim and case has examined himself as W.W. No.1 and have filed 14 documents and which have been marked as Exhibit-W/1 to Exhibit-W/14.

It is very interesting to note that some of the documents filed and exhibited by workman are inter-department official correspondence between officials of M/s. Best & Crompton Engineering Ltd. in original which are supposed to be in the official files of M/s. Best & Crompton Engineering Ltd. and not in custody of this workman. Further those documents have no relevancy in determination of the issue under reference.

Exhibit-W/1 shows that Sri D. Sivaramakrishnan, Project Manager of M/s. Best & Crompton Engineering Ltd. had issued a certificate certifying that Sri Goutam Pal, is working for M/s. Best & Crompton Engineering Ltd. at their Salboni site (N.N.P. Project) as a Store Keeper from 01-01-1993 till date i.e. the date the said certificate was issued on 24-02-1996. Said certificate also described the nature of works entrusted to Sri Goutam Pal.

Prima facie from Exhibit-W/1 it is seen that indeed the concerned workman Sri Goutam Pal was engaged by M/s. Best & Crompton Engineering Ltd. as a Store Keeper at one of its sites at Salboni (N.N.P. Project) from 01-01-1993 and he was working there till 24-02-1996.

The document which was filed by Bharatiya Reserve Bank Note Mudran Ltd. along with its written statement as an annexure and contents of its written statement prima facie prove the shop illumination work at Phase-II at N.N.P., Salboni, which was awarded by it to M/s. Best & Crompton Engineering Ltd. on 05-06-1997 and was successfully commissioned on 31-05-2000.

Therefore, from such annexure and the averments made in the written statement of Bharatiya Reserve Bank Note Mudran Ltd., it can be assumed that Sri Goutam Pal, a store keeper of M/s. Best & Crompton Engineering Ltd. worked at N.N.P. Project of Bharatiya Reserve Bank Note Mudran Ltd. site at Salboni till May 2000.

From Exhibit-W/1 it is seen the concerned workman was engaged by M/s. Best & Crompton Engineering Ltd. as a store keeper at its Salboni site since 1993.

Exhibit-W/2 appears to be official correspondence between Maaj Mathias, Admn. Cal and Mr. D. Sivaramakrishnan, Project Manager dated 20-05-1998, in connection with inspection report concerning Minimum Wages Act, 1940. Similarly, Exhibit-W/2 appears to be carbon copy of the notice dated 25-04-1998 issued by Labour Enforcement Office (Central), Ministry of Labour to M/s. Best & Crompton Engineering Ltd. and to Mr. D. Sivaramakrishnan, its Project Manager at new Note Press Project, RBI, Salboni, Midnapore.

Exhibit-M/3 appears to be reply of K. C. Srivastava, Engineer of M/s. Best & Crompton Engineering Ltd. to the Labour Enforcement Officer against the inspection report. Exhibit-W/4 appears to be another correspondence between Maaj Mathias, Admn. Calcutta and Mr. N. Rabikrishnan, RBI, Salboni about the completion of contract work at RBI, Salboni. Production of the above mentioned documents and getting the same exhibited in the Industrial Tribunal, a quasi-judicial body, by a workman who has nothing to do with those documents and custody of which is supposed to be in the official record of M/s. Best & Crompton Engineering Ltd. prove that the concerned workman being a Store Keeper has indulged himself in illegal activities and further proves he misused his employment as a Store Keeper and clandestinely taken away office records and kept the same in his personal custody.

Such conduct on the part of the workman creates a doubt regarding the genuineness of other two documents viz. Exhibit-W/5 and Exhibit-W/6. Exhibit-W/5 appears to be a letter written by one Mr. B. Chatterjee, Manager-Contracts of M/s. Best & Crompton Engineering Ltd. to M/s. Bharatiya Reserve Bank Note Mudran Ltd, Salboni, Midnapore authorising Sri Goutam Pal to sign Gate Pass applications and challans for said materials to take out for use at their other sites as the job is over at Bharatiya Reserve Bank Note Mudran Ltd. at Salboni on 01-03-2001. Such letter though written on the letter pad of M/s. Best & Crompton Engineering Ltd. does not bear any seal of the Manager-Contracts Sri B. Chatterjee or any acknowledgement endorsement by the authority of M/s. Bharatiya Reserve Bank Note Mudran Ltd. The workman has failed to examine Sri B. Chatterjee, the author of the said letter to prove the contents of the same. It is very interesting to note that said letter was addressed to M/s. Bharatiya Reserve Bank Note Mudran Ltd. and not to any specific concerned Officer of Bharatiya Reserve Bank Note Mudran Ltd.

Exhibit-W/6 appears to be another letter dated 01.03.2001, written on the letter on pad of M/s. Best & Crompton Engineering Ltd. by Regional Manager to M/s. Goel Roadlink Corporation, 5, Narayan Prasad Babu Lane, Calcutta- 700007. So, a question arises how such letter in original addressed to M/s. Goel Roadlink Corpn. came into the possession of the concerned workman.

That Exhibit-W/7 is an application written by the concerned workman to A.L.C.(Central) dated 28-02-2003 bearing the acknowledgement seal of the office of A.L.C., Central reveals that the workman has alleged that he worked as an employee of M/s. Best & Crompton Engineering Ltd. at N.N.P. Project, Salboni site since January, 1993. That he was paid salary up to March, 2002 by his employer but after April, 2002 he has not been paid any salary. Thus he has claimed a sum of Rs.28,1938/- as his arrear salary but at the same time has claimed Rs.74,335/- as a due from his employer. But he in his written claim statement has alleged that he was not paid salary from the month of March 2002. So, it appears the workman himself is not sure since when he was not paid salary/wages by his employer.

Exhibit-W/8 shows that the concerned workman had filed a representation before the Regional Manager, M/s. Best & Crompton Engineering Ltd. on 21-04-2003 for full and final settlement of his due and his unwillingness to accept the amount offered by the management.

Exhibit -W/9, W/10, W/11, W/12 and W/13 show that he has lodged a complaint before the Labour Commissioner against his employer M/s. Best & Crompton Engineering Ltd. for non- payment of his dues since April, 2002. But, no documents have come on record to substantiate he was retained by M/s. Best & Crompton Engineering Ltd. even after the completion of the contract work at Bhartiya Reserve Bank Note Mudran Ltd., Salboni site on 31-05-2000 save and except some official correspondence having no connection with the workman and his employer M/s. Best & Crompton Engineering Ltd. and which are not supposed in the custody of the workman.

Exhibit-W/14 shows that the concerned workman moved the Hon'ble High Court, Calcutta in writ jurisdiction by filing Writ Petition No.15223 (W) of 2004 where he has challenged the correctness of the order of reference. While allowing writ petition the Hon'ble High Court has given direction to the Ministry of Labour to reframe the issue on illegality of the service termination of the workman and whether he was employed by the M/s. Best & Crompton Engineering Ltd. w.e.f. 01-01-1993.

Further from the order dated 27-08-2008 passed by the Hon'ble High Court in the said writ petition shows in the affidavit-in-opposition filed by M/s. Best & Crompton Engineering Ltd. before the Assistant Labour Commissioner, it had admitted due of Rs.32,751 /- payable to the workman. Therefore, M/s. Best & Crompton Engineering Ltd. was directed by the Hon'ble High Court to pay the admitted sum of Rs.32,751/- to the workman within two months from the passing of the said order on 27-08-2008.

In the instant case no substantial documentary evidence have come on record to show that the concerned workman continued to work for M/s. Best & Crompton Engineering Ltd. even after commissioning of the contract work awarded to it by Bharatiya Reserve Bank Note Mudran Ltd., Salboni, Midnapore on 31-05-2000. However, from Exhibit-W/1 it appears that the concerned workman was in service for M/s. Best & Crompton Engineering Ltd. since 1993. Therefore, an inference can be drawn that the concerned workman was in continues serviced of M/s. Best & Crompton Engineering Ltd. from 1993 to 31-05-2000.

Therefore, in view of provision of section 25-F of the Industrial Dispute Act, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until – (a) the workman has been given one month notice in writing indicating the reason for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice ; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 day's average pay (for every completed year of continuous service) or any part thereof in excess of six months.

In the instant case nothing has come on record to show that the service of the concerned workman was terminated by issuing a notice by his employer M/s. Best & Crompton Engineering Ltd. who had rendered more than one year of continuous service to it. Therefore, this Tribunal is of view the concerned workman who had worked for more than seven years for M/s. Best & Crompton Engineering Ltd. is entitled to get a notice of termination or in lieu of notice one month wages.

Further, nothing has come on record to show that the employer has complied with the provision of section 25-F (a) and (b). Therefore, this Tribunal is of view the workman is entitled to get one month wages in lieu of notice and also entitled to get compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months, but subject to adjustment of the amount which he has already received in view of the order passed by the Hon'ble High Court in writ petition No. 15223(W) of 2004 on 27-08-2008.

In view of the above the Reference Case No. 13 of 2004 is disposed of and award is passed accordingly.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1684.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गार्डन रीच शिप बिल्डर्स एंड इंजीनियर्स लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 02 OF 2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/195/2018 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1684.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 02 OF 2019) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Garden Reach Ship Builders & Engineers Ltd., and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/195/2018 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.02 OF 2019

Parties: Employers in relation to the management of
Garden Reach Ship Builders & Engineers Ltd.

AND

Their Workmen/ Union

Appearance :

On behalf of Management

: Ld. Counsel Mr. R. De & Ld. Counsel
Mr. B. Banerjee

On behalf of the Workmen

: Absent

Dated 24th March, 2023

AWARD

The Management is present through its Ld. Counsel. None appears on behalf of the Union on calls.

This is a Reference Case of 2019 and till date the Union which has espoused the dispute and whose representative had put his appearance has failed to file claim statement i.e. even after lapse of four years.

The conduct of the Union proves that it is not interested to proceed with the case or it has no more grievance against the Management.

However, the Govt. of India, through Ministry Labour has referred the following issue for adjudication by this tribunal vide Order No. L-42011/195/2018 (IR (DU)) dated 18.02.2019:-

“Whether the claim of the General Secretary, GRSE Ltd. workmen union against the transfer of Nine Security Personnel from Belur & TTC Unit to SSY/ Taratala is legal and justified? Is there any violation of the Standing Orders? If not, what relief and directions are necessary in the case?”

Unfortunately, there is nothing in record to adjudicate the issue under referenced.

Accordingly, no dispute award is passed and Reference Case No. disposed of/

Send copy of this order / award to the Ministry for doing needful.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1685.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गार्डन रीच शिप बिल्डर्स एंड इंजीनियर्स लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और कामगार/ संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 03 OF 2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/186/2018-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1685.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 03 OF 2019) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Garden Reach Ship Builders & Engineers Ltd., and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/186/2018- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 03 OF 2019

Parties: Employers in relation to the management of

Garden Reach Ship Builders & Engineers Ltd.

AND

Their Workmen/ Union

Appearance :

On behalf of Management

: Ld. Counsel Mr. R. De & Ld. Counsel
Mr. B. Banerjee

On behalf of the Workmen

: Absent

Dated 12th January, 2023

AWARD

The Management is represented by its Ld. Counsel is present.

None appears from the side of Union on whose behest the Govt. of India, Ministry of Labour has referred the industrial dispute to this Tribunal for adjudication is found absent since 03-06-2020. Though union had put appearance through its Id.. Counsel Mr. Ritesh Kumar Maity.

However, efforts have been made by the Tribunal to serve notice upon the Union "The General Secretary, G.R.S.E Ltd. workmen's Union, J- 470, 1st Floor, Paharpur Road, Kolkata-700024 through Regd. Post and Speed Post the only mode vide which notice could be sent or served upon the parties to the dispute and all along Regd. Envelope addressed in the Union Party No. 2 had returned undelivered with postal endorsement "Address could not be located" in the given address.

Ultimately the track report dated 03.12.2022 shows the Union upon whom notice was sent by speed post shows the "addressee moved item returned". No alternate address of the Union is available in the record.

Under the circumstance, the Tribunal hold the union who has raised the dispute challenging certain action of the Management u/s 9A of the I.D. Act, and which has also failed to file claim statement is no more interested to get redressal of its grievance against the management.

Therefore, I do not hesitate to hold the union who has raised the present dispute challenging the proposed charge in the conditions of service without consulting it, has not further grievance against Management for the disputed action.

Further there is no statement of claim to redress the issue "Whether the action of Garden Ship Builders and Engineers (GRSE) Ltd. Management is effecting proposal change u/s 9A with reference to the Entry No. 8 as specified in fourth schedule of I.D. Act, 1947 that stipulates withdrawal of any customary concession or privilege or change in usage without taking the recognised union into confidence is legal and/ or justified? If not, what relief the concerned workmen are entitled to?" referred by Govt. of India vide Order No. L-42011/186/2018-IR(DU) dated 22.01.2019.

Accordingly, no dispute award is passed and Reference Case No. 03/2019 is disposed of.

Send copy of this award to the Ministry for doing needful.

Supply copy of the award to the parties as per law.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्तूबर, 2023

का.आ. 1686.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडर-इन-चीफ, पोर्ट ब्लेयर ; कमोडोर अधीक्षक यार्ड, पोर्ट ब्लेयर, के प्रबंधन के संबद्ध नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 04 OF 2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-14011/1/2021 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1686.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 04 OF 2021) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Commander-in-Chief, Port Blair, The Commodore Superintendent of the Yard, Port Blair & Another, and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-14011/1/2021 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 04 OF 2021

Parties: Employers in relation to the management of

The Commander-in-Chief, Port Blair, The Commodore Superintendent of the Yard, Port Blair & Another

AND

Their Workmen/ Union

Appearance:

On behalf of Management : Present

On behalf of the Workmen : Present

Dated 19th January, 2023

AWARD

The Management is represented by its counsel. The Union is represented by its counsel. The Union is represented by its authorised representative Vivek S. Kum and who files a petition stating that on the same issued a case is pending before the Industrial Tribunal, Port Blair being No. 02/2022 and as such it wants to withdraw the present case.

Considered. That apart the Circular issued by Ministry of Labour Employment, Govt. of India in respect of Jurisdiction of Central Govt. Industrial Tribunal –cum- Labour Courts, the C.G.I.T., Kolkata, has not been vested with territorial jurisdiction to hear case relating to Andaman & Nicobar Island.

As per reference Order No. L-14011/1/2021 (IR(DU)) dated 01.03.2021 the present Reference relates to matter Naval Ship Repair Yard, Haddo Port Blair.

Therefore, in view of Govt. of India, Ministry of Labour Notification with regard to the jurisdiction of the C.G.I.T –cum- Labour Court, this tribunal at Kolkata has no jurisdiction to hear the case of Andaman & Nicobar Island.

Accordingly, the Reference Case No. 4/2021 is returned to the Ministry for doing needful.

Reference Case No. 4/2021 is disposed of without cost.

Send copy of this order to the Ministry for its perusal and doing needful.

Supply copy of this order to the parties.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1687.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आरती कॉटन मिल्स, दसनगर, के प्रबंधन के संबद्ध नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय

सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 06 OF 2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/09/2020 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1687.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 06 OF 2020) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Arati Cotton Mills, Dasnagar, and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/09/2020 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 06 OF 2020

Parties: Employers in relation to the management of

Arati Cotton Mills, Dasnagar

AND

Their Workmen/ Unions

Appearance:

On behalf of Management: Arati Cotton Mills :Ld. Adv. S. Mukherjee

On behalf of the Workmen : Absent.

Dated 10th March, 2023

AWARD

The Management of M/s Arati Cotton Mills is present through its Ld. Counsel.

Unfortunately, none of the five Unions whose names appear in Reference Order No. L-42011/09/2020 IR-(DU) dated 21.01.2020 are found present when the matter is called.

Record shows notice of appearance sent to all five unions through speed post have been duly served as per track report.

In spite of due service, the representative of all unions failed to appear and pursue the dispute espoused by them for regularization of Somnath Mondal and others and for enhancement of wages.

Such conduct on the part of all five unions, it can be inferred that unions are no more interested to proceed with the dispute under reference.

In the above, the Reference Case No. 06/2020 is disposed of and no dispute award is passed.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1688.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राइफल फैक्ट्री ईशापुर, परगना, के प्रबंधतंत्र के संबद्ध नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय

सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 16 OF 2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल -14011/24/2016 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1688.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 16 OF 2022) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Rifle Factory Ishapore, Parganas, and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-14011/24/2016 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 16 OF 2022

Parties: Employers in relation to the management of

Rifle Factory Ishapore, Parganas

AND

Their Workmen/ Union

Appearance :

On behalf of Management: Rifle Factory Ishapore, Parganas : Absent.

On behalf of the Workmen/ Union : Absent.

Dated 02nd March, 2023

AWARD

The Management fails to appear inspite of due service of notice.

Notice sent to the President, Contractor's workers Mazdoor Sangh on 09.09.2022 through regd. Post has not returned undelivered till date. Therefore, it can be assumed notice addressed to the Union sent through regd. post is duly served upon it.

That apart reference order dated 25.02.22 shows the copy has been forwarded to the Union. Therefore, it can be assumed the union which has raised the dispute is well aware of the present reference case and inspite of having knowledge about the present case and its non-appearance it can be assumed that it is no more interested to pursue with the dispute raised by it.

The Ministry of Labour vide its letter No. L-14011/24/2016 (IR (DU)) dated 15.02.2022 has referred the following issue for adjudication.

“Whether the claim of Contractor's Workers Mazdoor Sangh vide letter dated 11.04.2016 to the management of Rifle Factory, Ishapore that ‘Shri Bikash Ghosh and 6 others (list attached) working as contract labour in the establishment of Rifle Factory, Ishapore are performing the work which are same and similar in nature with that of workmen directly employed in the establishment of Rifle Factory, Ishapore’ is proper, legal and justified? If yes, to what relief including regularization of these workers are entitled and what directions, if any, are necessary in the matter?”

Unfortunately, the union which has raised or espoused the above dispute has failed to file its claim statement with supporting documents. Therefore, there is nothing in the record for adjudication of the issue in question.

Non-appearance of the union inspite of having knowledge about the dispute espoused by it, an inference can be drawn that it is no more interested to pursue the matter and no more it has grievance or dispute against the Management.

Accordingly, no dispute award is passed and Reference Case No. 16 of 2022 is disposed of.

Send copy of this order/ Award to the Ministry for doing needful.

Supply copy to the parties.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1689.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पी.ओ. कोलकाता हवाई क्षेत्र, के प्रबंधन के संबद्ध नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 18 OF 2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/114/2019-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1689.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 18 OF 2019) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **P.O. Kalakunda Air Field , and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/114/2019- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 18 OF 2019

Parties: Employers in relation to the management of

P.O. Kalakunda Air Field

AND

Their Workmen/ Union

Appearance :

On behalf of Management

: Ld. Counsel Mr. Joy Sarkar

On behalf of the Workmen

: Absent

Dated 16th February, 2023

AWARD

The Management is represented by its Ld. Counsel Joy Sarkar and who files his Vakalatnama. Let it be taken on record.

The Union is represented by its authorized representative and also files a petition along with copy of order dated 27.12.2022 passed by Govt. of India, Ministry of Defence vide which the President of India, has been pleased to set aside the penalty order dated 12.06.2018 imposed upon Sri Donesh Anthony, MES No. 281769, Mate (FGM) under GE(AF) Kalaikunda and submits that the concerned workman has been reinstated in the service by the President of India and as such, Union does not want to pursue the matter and pray for dismissal of the same.

On such submission, Ld. Counsel appearing for the management concede to the submission made by the A.R. of union.

Be that as it may, the Govt. of India, Ministry of Labour vide its Letter No. L-42011/114/2019-IR(DU) dated 17.09.2019 has referred the following issue for adjudication:

“Whether the action of the Management of Garrison Engineer (Airport), Kalaikunda amounts to double jeopardy in dismissing the services of Shri Donesh Anthony, Assistant Secretary, MES Mazdoor Sangh w.e.f. 12.06.2018 upon re-verification of his caste certificate which was verified on 23.05.2008 and accepted by the Management by way of imposing punishment of stoppage of increment and is fair and legal? If not, what relief the employee is entitled to?”

Record reveals till date which has espoused the above dispute has failed to file its claim statement.

However, from the documents that have been filed by the union shows that during the pendency of the reference, the concerned workman has filed an application for review of the order of the management before the President of India, the Reviewing Authority and who has been pleased to hold the concerned workman to be a genuine Schedule Tribe holding a valid caste certificate and pleased to set aside the order of termination of the service of the workman by the Management /Employer on 12.06.2018.

Therefore, at present there exist no dispute to be adjudicated by the Tribunal.

Accordingly, Reference Case No. 18/2019 is disposed of. No dispute award is passed.

Send copy of this order to the Ministry for doing needful.

Supply copy to the parties as per law. Let the application of copy of order dated 27.12.2022 being taken on record.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1690.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय राष्ट्रीय राजमार्ग प्राधिकरण एवं अन्य, के प्रबंधन के संबद्ध नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 24 OF 2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/172/2013 -आईआर(डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 13th October, 2023

S.O. 1690.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 24 OF 2014) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **National Highways Authority of India & Others, and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/172/2013 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 24 OF 2014

Parties: Employers in relation to the management of

National Highways Authority of India & Others

AND

Their Workmen/ Union

Appearance :

On behalf of Management: 1. The Chairman,

National High Way Authority: Ld. Adv. Dipankar Das

& Ld. Adv. Nilanjan Pal

2. The Project Director, National

High Way Authority &

3. M/s Gladiator Service

...Contractor Employer

On behalf of the Workmen : None

Dated 27th February, 2023

AWARD

The Central Govt. in exercise of the powers conferred by Sec. 10(1) (d) and (2A) of the I.D. Ac, through Ministry of Labour vide Order No. L-42011/172/2013 (IR (DU)) dated 27.02.2014 has referred the following dispute to this Tribunal for adjudication.

“Whether the action of the Management of national Highways Authority of India by issuing letter to M/s Gladiator Services, contractor for discontinuance of collection of user toll fee resulting in retrenchment of 150 no. of Barrier man and other personnel by the contractor without following statutory rules and regulations is justified or not? If not, what relief the workmen are entitled to?”

The facts giving rise to the present dispute in gist is that N.H.A.I being the owner of Dankuni Toll Plaza, had engaged M/s Gladiator Services to run the said toll plaza. Therefore, the contractor engaged workman for collection of toll tax, user fees for security purpose and for doing other toll plaza related work.

It has been alleged by the union due to the cancellation of the contract between NHAI and Contractor M/s Gladiator Services on and from 07.10.2012, the services of the workmen working for the contractor get terminated without payment of legal dues.

That they have been engaged by the subsequent contracts of the NHAI for the same job for which they were engaged, but at the wages for below then to which they were paid by M/s Gladiator Services. That they have not been issued with service certificate. The principal employer has failed to protect the wages drawn by them.

Thus, they have prayed that their retrenchment vide letter No. 13022/1/2001/PIU (DUP) 706 dated 06.10.2012 being done without compliance of statutory requirements is void, ab initio and necessary direction may be given to the Principal Employer for restoration of their service condition and wages last drawn by them.

Such claim of the Union/ workmen has been contested only by NHAI, by filing w/s and where it has alleged that it engaged M/s Gladiator Services as the Collecting Entity, for collection of toll fees/ tax in between Dankuni and Palsit Section of National High Way for a period of one year w.e.f. 01.10.08. Considering the performance of the Collecting Entity, the contract was extended till 06.10.2012. As per the terms & conditions of the contract, the Collecting Entity was to deploy adequate number of qualified personnel as mentioned in the schedule IV of the contract and shall discharge all statutory obligation towards its employees. That personnel deployed by collecting entity shall not have connection whatsoever with NHAI and there will be employer-employee relationship in between Collecting entity and its employees.

After termination of contract with M/s Gladiator the authority engaged M/s Konark Infrastructures Ltd. w.e.f. 17.03.2013.

That it had no privacy of contract with the workmen of the Collecting Entity and as such, the Reference is not maintainable against it.

Ld. Counsels appearing for the N.H.A.I submits that all the workmen of M/s Gladiator have been absorbed by the subsequent Collecting Entities engaged by the N.H.A.I. Therefore, the present reference case is not maintainable.

Such facts stands admitted by the Union in Paragraph-11 and Paragraph-12 of its claim statement where it has been stated those 17 workmen who have been retrenched due to the non-extension of the contractor with Gladiator after 06.10.2012 have been re-employed in phase-wise by M/s Konark Enterprise.

Be that as it may the union which has espoused the dispute has failed to tender the evidence of witnesses viz. Kumud Ranjan Sarkar and Jai Prakash Singh for further examination and cross-examination.

It has failed to exhibit a single document in support of its claim.

Therefore, legally there is nothing in record in support of the claim statement filed by the union.

Further, none appearance of the representative of union to pursue with the dispute, non-examination of the witnesses whose evidence in chief an affidavit it had filed and failure to prove and produce documents in support its claim give rise to an interference that no more it has grievance against the management or against the erstwhile employer of the workmen whom it represent.

Accordingly, no dispute award is passed. Reference Case No. 24/2014 is disposed of.

Send copy of the Award to the Ministry for doing needful.

Supply copy to the parties.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1691.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वियोम नेटवर्क्स लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 36 OF 2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-40012/23/2014-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1691.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 36 OF 2014) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Viom Networks Limited, and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-40012/23/2014- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 36 OF 2014

Parties: Employers in relation to the management of

Viom Networks Limited

AND

Their Workmen

Appearance :

On behalf of Management: MTNL : Present

& Other Management : Absent

On behalf of the Workmen : None

Dated 16th February, 2023

AWARD

The M.T.N.L is represented by its Ld. Lawyer Rajib Mukherjee.

The remaining parties to this proceeding including the workmen who had espoused the dispute are found absent, when the matter is called the workmen who have been contesting the reference too are found absent. So, it can be presumed the workmen who have espoused the present dispute are not interested to proceed with the case.

Therefore, the tribunal decided to dispose of the present dispute on the basis of materials on record.

The Ministry of Labour vide its Letter No. L-40012/23/2014-IR (DU) dated 03.04.2014 has referred the following issues for adjudication:-

- (1) Whether demand of the workmen for grant of Central Wages in the light of better financial benefit is legal and/or justified?

Whether the workmen are performing twelve hour job is a matter of fact and whether calculation of Central Minimum Wages along with twelve hour job as demanded by the workmen are legal and/or justified? If not, to what relief the workmen concerned are entitled to?

- (2) Whether alleged illegal termination of service of namely Sk. Dilawar Hossain, (working since 01.10.2013), 2. Sri Kali Sankar Singha (working since 01.10.2013, and Sri Manaranjan Sarul, working since 01.09.2013 by M/s Soltek Insolation Private Limited, the present contractor without following any principle of law is legal and/or justified? If not, to what relief the workmen concerned are entitled to?

- (3) Whether demand by the workmen for payment of leave with wages on account of earned leave, National and Festival Holidays for the year 2009-2010 and 2010-2011 by the contractor M/s BCL Secure Premises Pvt. Ltd. is legal and/or justified? If not, to what relief the workmen concerned are entitled to?

The workmen, who have espoused the present reference case, have filed the claim statement.

M/s Viom Network Ltd. has filed written statement.

M/s Soltek Insolation Private Limited too has filed its written statement.

M/s BCL Secure Premises Pvt., Ltd. has also filed its written statement.

Therefore, it is seen only M.T.N.L has failed to file its written statement.

Be that as it only from the pleadings of the parties the facts behind the present dispute is that the Principal Employer i.e. M/s Viom Network Ltd. (Now called as A.T.C Telecom Infrastructure Private Limited) is a Infrastructure Provider like installation of mobile tower, antenna systems, power supply, battery back-up, pre-fabricated shelter and other allied equipment, and letting of space on such tower to telecom companies who are licensed under the Telegraph Act.

In order to carry out its business as an infrastructure to telecom Co. it has engaged contractors for supply of different categories of workmen with the change in the contractor, the immediate employer of the workmen used to be changed. The workmen are used to work as security guard under caretaker of the towers.

It has been alleged by the workmen that the employer never followed the law and also, deprived them from getting minimum wages to which they are entitled to. They were made to work beyond 12 hours and never paid over time to them. They have been deprived of the dues as per the labour law by frequent change in contractor employer. Their service are terminated whimsically without giving them legal dues. The employer never honoured the settlement that arrived between the employer and employees. In order to deprive them their legal rights, no appointment letters were ever issued to them.

The Principal Employer M/s Viom has alleged that it never engaged those employees who are actually engaged by its contractors. To work for them is the different unit of it. It never terminated any of the employees of its contractors. Thus, it has alleged the present reference and is not maintainable against it.

While Contractor Employer M/s Soltek Insulation Pvt. Ltd. has alleged that all along it paid Minimum Wages at rate fixed by the Govt. of West Bengal, that it terminated the service of some of its employees who were found guilty, misconduct as per law by giving one month's notice and one month's wages. Therefore, it has prayed for dismissal of the Reference Case.

Contractor M/s B.C.L Secure Premises Pvt. Ltd. has denied all the allegation as brought against it and has prayed for dismissal of the Reference.

Unfortunately, when the matter has been fixed for adducing evidence by the workmen in support of their claim, they have refrained themselves from attending the tribunal and pursuing with their claims.

Except the claim petition I do not find any supporting evidence on record from the side of workmen. The documents filed by them cannot be taken into consideration as the same are not proved or exhibited.

Under the circumstance, there is nothing on the basis of which the issues and reference can be decided.

None participation of workmen in the present proceeding can give rise to an interference that they no more want to proceed with the dispute which they have raised against their employer.

Therefore, this Tribunal does not find any impediment in passing no dispute award.

Accordingly, the Reference Case No. 36 of 2014 is disposed of and no dispute award is passed.

Send copy of this order to the Ministry for doing the needful.

Supply copy to the parties.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1692.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **केंद्रीय रेशम बोर्ड**, के प्रबंधन के संबद्ध नियोजकों और **कामगार/संघ**, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 44 OF 2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/105/2013 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1692.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 44 OF 2013) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Central Silk Board, and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/105/2013 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 44 OF 2013

Parties: Employers in relation to the management of

Central Silk Board

AND

Their Workmen/ Union

Appearance:

On behalf of Management: Central Silk Board : Ld. Adv. Mr. A.K. Basu & Ld. Adv. Mr. A. Lahiri

On behalf of the Workmen : None.

Dated 16th February, 2023

AWARD

The Union is found absent when the matter is called. The Management is present through its Ld. Counsel.

Record shows the notice of appearance sent to Union has returned undelivered with postal endorsement "Refused". Now, it is settled law "Refusal" is a good service.

Thus, from such conduct of the Union it can be presumed that union is not interested to proceed with the present reference case, which it has espoused.

Therefore, let me decide the present case on the basis of materials on record.

The Govt. of India on the strength of power conferred u/s 10(1)(d) (2A) of the I.D. Act, 1947 and Ministry of Labour, vide its letter No. L-42011/105/2013 (IR (DU)) dated 12.09.2013 referred the following issue for adjudication:-

"Whether the management of Central Silk Board in denying the demand of regularization of service of 38 nos of skilled farm workers of P1, BSF, Dhubulla, Nadia Dist. of West Bengal as per Annexure V is legal and justified? To what relief the skilled farm workmen of Central silk Board are entitled to?" Whether the demand of skilled farm workers for scale of pay of Group 'C' is justified? Whether the demand of skilled farm workers for enhancement of superannuation age from 55 years to 60 years is justified? To what relief the workman are entitled to?"

The facts of the case in brief is that the present 38 workmen are from Dhubulia Basic Seed Farm, in the District of Nadia, West Bengal. It is their contention that they have been working for the above seed farm since its establishment in the year 1986. Initially, they were recruited as casual worker through Panchayat in the capacity of daily rated seasonal labour and on no work no pay basis.

In the Year 1995, sometime in the month of September the management after holding screening test some of the seasonal daily rated labourers were engaged as "Casual farm workers" and they were paid minimum daily wages and enjoyed medical facility, five national holidays, such leave etc. On completion of two years' service they were made "Time Scale Farm Workers" since 1997 and they started getting wages in the scale of pay of Rs.1200-25-1500-40-1700 with V.D.A., H.R.A and M.A and from time to time their scale of pay were revised but they have been made ineligible for Central Pay recommendation. The time scale farm workers were converted into skilled farm workers and even after working for 28 years they have not been granted all the facilities enjoyed by the other staff of Silk Board and who also enjoyed Central Govt. Pay recommendation, though they are discharging the similar work that is discharged by earlier Group-'D' staff at present on "C" staff. Their retirement age is also fixed at 55 years while the other Central Govt. employees' aged of superannuation is 60 years.

Therefore, they have prayed for regularisation of their service as employee of Central Govt. in the post of Group 'C' and with all benefits which Group 'C' staff of the Central Govt. enjoys.

While the Management in its w/s has alleged those casual labourers were engaged to do various casual and manual nature of works for time bound projects without following rules and procedure of engagement. They were not engaged against sanctioned post. In view of settlement in 1970, those labours who have put 10 years of service were placed on time wages and later re-designated as time scale farm workers were paid salary in time scale. Those time scale farm workers who fulfilled the qualification to be appointed in cadre of Group 'D' staff subject to vacancies were absorbed and up to 2006 about 300 were absorbed as Group 'D' Staff. But after the recommendation of VI

Central Pay Commission, the Govt. of India abolished the post of Group 'D' and the same was upgraded to Group 'C'. Therefore, question of their absorption as Group 'D' staff does not arise.

The rules does not provide absorption of farm workers against any Group 'C' post. Therefore, it has prayed for dismissal of reference.

Fortunately or unfortunately the union which has espoused the case of 38 workmen have stopped pursuing the present case by adducing evidence for which the case has been fixed since 10.01.16.

Such conduct on the part of the Union shows that it is no longer interested to proceed with this case.

That apart except the claim petition there is no materials on record to support the claim of case of the Union.

Accordingly, the Reference is disposed of and No Dispute award is passed to that effect.

Send copy of this order/Award to the Ministry for doing needful.

Supply copy to the parties.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1693.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डिशनेट वायरलेस लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 46 OF 2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-40011/75/2013-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1693.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 46 OF 2013) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Dishnet Wireless Limited, and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-40011/75/2013 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 46 OF 2013

Parties: Employers in relation to the management of

M/s Dishnet Wireless Limited

AND

Their Workmen

Appearance:

On behalf of Management: **M/s Dishnet Wireless Limited** : Absent.

& M/s Frontline (NCR) Business Solutions Pvt. Ltd. : Present.

On behalf of the Workmen :

Dated 09th February, 2023

AWARD

The authorised representative of M/s Frontline Solution is present. But the principal employer as well the union are found absent when the matter is called. None appearance on their behalf. Union fails to file show-cause. The record shows, the Govt. of India, Ministry of Labour in exercise of power conferred by Sec 10(1) (d) of (2A) of the I.D. Act and vide its Order No. L-40011/75/2013 (IR (DU)) dated 19.03.2013 has referred the following issue to this tribunal for adjudication:-

SCHEDULE

“Whether the action of management of M/s Frontline (NCR) Business Solution Pvt. Ltd. is justified in denying job to Sri Parsuram Behera & Four others is legal and or justified? If not, what relief the workmen are entitled to?”

Unfortunately, the union which has espoused the present dispute has failed to file its statement of claim till date. In fact, it has failed to participate in the present proceeding inspite of due service of notice upon it.

Therefore, it can be safely informed the union is no more eager to pursue with the present case or no more it has grievances against the management. There is no material to pursue against the management. Accordingly, no dispute award is passed. Reference Case No. 46 of 2013 is disposed of. Inform the Ministry, parties accordingly.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1694.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सेंट्रल इन्वेस्टिगेशन एंड सिक्योरिटी सर्विस लिमिटेड, के प्रबंधन के संबद्ध नियोजकों और कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 70 OF 2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/94/2014-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th October, 2023

S.O. 1694.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 70 OF 2014) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Central Investigation & Security Service Ltd., and The Worker**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42011/94/2014- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 70 OF 2014**Parties:** Employers in relation to the management of**M/s Central Investigation & Security Service Ltd.**

AND

Their Workmen

Appearance :

On behalf of Management : None

On behalf of the Workmen : None

Dated 19th January, 2023

AWARD

Today too like on the previous dates parties are found absent. None appears on behalf of the Principal Employer Central Cottage Industries Corporation of India Ltd. and its two contractors viz. M/s Central Investigation and Security Service Ltd. and M/s Nobel Security Service and also on the behalf of the Union, who has espoused the cases of Contractors' employees demanding minimum wage fixed by the Central Govt. from time to time from the employers.

Report shows except authorised representative of the Principal Employer and one Ganesh Ch. Pal, one of alleged workman used to appear and both of them have stopped appearing before this Tribunal since 23.03.2020.

Once again, the Tribunal has tried to notify the parties but all its efforts in vain. Thus, invoking the provision of Rule-22 of I.D. Rules, 1957, this Tribunal has decided to dispose of the present case.

The Govt. of India, Ministry of Labour exercise of power conferred by Section 10 (1) (d) and 10 (2A) of the I.D. Act referred the following dispute for adjudication by the Tribunal, vide its Order No. L-42011/94/2014-IR (DU) dated 11.11.2014.

“Whether the action of Management of Central Cottage Industries Corporation of India Ltd. by not allowing the minimum wages fixed by the Central Govt. from time to time to their contractual workers engaged through contractors viz. M/s Central Investigation & Security Service Ltd., and M/s Nobel Security Service is legal and/ or justified? If not, what relief the workmen are entitled to?”

It is the case of the Union, that inspite of Order passed by Regional Labour Commissioner for payment of minimum wages fixed by the Central Govt. to the contractor's employees of Cottage Industry, the Principal Employer as well as Contractor employer failed to adhere the order and follow the Govt. Order.

The Cottage Industry in its written statement has alleged that these employees are employee of its contractors and who are liable to pay salary / wages to their employees as per agreement executed between it and its contractors, the contractor were / are bound to pay minimum wages fixed by the State Govt. and not by the Central Govt. and which was paid to their employees.

Therefore, it has paid for dismissal of the reference.

While contractor employer viz. Central Investigation and Security Services Ltd. who had put its appearance has failed to file any written statement.

No notice could be served upon M/s Nobel Security Service.

Unfortunately, the Union which has espoused the dispute on behalf of the contractors employees appear to have abandoned the case and as such for the reason best known to one Ganesh Pal, one of the contractors employee who used to pursue the case too has ultimately stopped appearing to conduct the case.

Therefore, in the record apart from the claim statement and W/S of the Principal Employer, I do not find any materials to show at what rate wages / salary was paid to those contractors' employee working in the establishment of Central Cottage Industry, Govt. of India Enterprise, whether they were paid according to the minimum wages followed in West Bengal as alleged by Principal Employer or in some other rate.

Nothing is there on record to show the minimum wages to which those employees were entitled to get at the relevant time.

Therefore, the reference is dismissed. Accordingly an award of dismissal is passed.

The reference case No. 70 of 2014 is dismissed.

Send copy of Award to the Ministry for information and doing the needful.

Supply copy to the parties as per law.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1695.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स वियोम नेटवर्क प्रा. लिमिटेड ; मेसर्स सोलटेक इंसोलेशन प्रा. लिमिटेड, के प्रबंधन के संबंध में नियोजकों और कामगार/संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट(संदर्भ संख्या 76 OF 2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[सं. एल -42012/170/2014-आईआर(डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 13th October, 2023

S.O. 1695.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 76 OF 2014) of the **Central Government Industrial Tribunal cum Labour Court – Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s VIOM Network Pvt. Ltd.; M/s Soltek Insolation Pvt. Ltd., and The Worker/ Union**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[No. L-42012/170/2014- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.76 OF 2014

Parties: Employers in relation to the management of

M/s VIOM Network Pvt. Ltd. &

M/s Soltek Insolation Pvt. Ltd.

AND

Their Workmen/Union

Appearance :

On behalf of Management: **M/s VIOM Network Pvt. Ltd & : Absent**

M/s Soltek Insolation Pvt. Ltd. : Absent

On behalf of the Workmen : Absent

Dated 24th January, 2023

AWARD

M/s VIOM Net Work Pvt. Ltd. and M/s Soltek Insolation Pvt. Ltd. are found absent when the matter is called.

As per A.D. Card notice of this case has been duly served upon M/s Soltek.

Both the workman and union too are found absent inspite of due service of notice of appearance.

The Govt. of India, Ministry of Labour vide its Order No. L-42012/170/2014-IR (DU) dated 03.12.2014 has referred the following issue for adjudication.

SCHEDULE

“Whether the action of the management of M/s Soltek Insolation Pvt. Ltd. is justified by terminating the service of Shri Niranjan Pandit is legal and/or justified? If not, what relief the workmen are entitled to?”

Record shows both the Union and the workman who had received the notice of the case had failed to put their appearance. In fact, they had never appeared inspite of having received notice of the present case which has been initiated on their challenging the action of the Employer before the Govt. Authorities.

Therefore, it can be assumed that they have no interest to pursue the matter or no grievance against the employer.

In fact, there is nothing on record to pursue the matter. Accordingly, Reference Case No. 76 of 2014 is dismissed and award is passed.

Send copy of this order to the Ministry.

Supply copy to the parties as per law.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1696.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट (03 (C) of 2016) प्रकाशित करती है।

[सं. एल-12012/75/2015- IR(B-II)]

सलोनी, उप निदेशक

New Delhi, the 13th October, 2023

S.O. 1696.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 03 (C) of 2016) of the *Indus.Tribunal-cum-Labour Court Patna* as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen.

[No. L-12012/75/2015- IR(B-II)]

SALONI, Dy. Director

ANNEXURE**BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA****Reference Case No.:- 03 (C) of 2016**

Between the management of Deputy General Manager, Canara Bank, Circle Office, Luv-kush Tower, Exhibition Road, Patna (Bihar)-1 and their workman Sri Krishna Kumar Mishra, Vill- Dhebni P.O- Brahampur, Dist.- Buxar, Bihar-802130.

For the management:- Sri Ranjan Ghoshra, Advocate.

For the workman:- Sri B. Prasad, President, Bank Employees Federation, Bihar.

Present:- **Manoj Shankar**
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dt- 24th August, 2023.

By the adjudication order no.- L-12012/75/2015-IR(B-II) New Delhi, dated- 15.02.2016 the Govt. of India Ministry of Labour New Delhi has referred under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as “ the Act”) the following dispute between the management of Deputy General Manager, Canara Bank, Circle Office, Luv-kush Tower, Exhibition Road, Patna (Bihar)-1 and their workman Sri Krishna Kumar Mishra, Vill- Dhebni P.O- Brahampur, Dist.- Buxar, Bihar-802130 for adjudication to this tribunal.

SCHEDULE

“ Whether the action of the management of Canara Bank to impose punishment of dismissal without Notice to the workman Sri Krishna Kumar Mishra peon after a defective enquiry in violation of Natural Justice was proportionate? If not, what relief the workman was entitled to?”

2. Briefly stated the case of workman is that the workman Krishna Kumar Mishra employed as peon in the management bank on 30.05.1980. It is further asserted that the workman has filed an application to grant leave from 04.06.2007 to 12.06.2007 and his leave was duly sanctioned as per the procedure and practice and the workman availed the leave. It is further asserted that the workman took the leave of the said period on account of marriage ceremony of his daughter. It is further asserted that the bank lodge a FIR against the workman and the petitioner was enjoying the privilege of bail in the said case. But yet the bank management started departmental enquiry during pendency of the criminal case i.e not proper and justified and thus the violated all norms of practice for the enquiry proceeding as laid down in the Desai Award and Bipartite Settlement. It is further asserted that the workman was charged as one Tara Devi and Dashrath Pandey the account holder approached to him to deposit Rs. 5,000/- (Rs. Five Thousand) in their account and the same was accepted by him and receipt was given by the workman on 31.05.2007. When the customers subsequently came to withdraw Rs. 4500/- (Rs. Four Thousand Five Hundred Only) from saving account on 22.06.2007 and then they found in-sufficient balance in their account, customer gave complaint against the workman. Charge No.-2 attributed against the workman is he absconded with Rs. 7,51,800/- (Rs. Seven Lakhs Fifty One Thousand Eight Hundred) cash from Buxar Branch which was given to the workman for bundling. It is further asserted that the workman duly replied the charges as leveled against him. Both the allegation were false and frivolous but yet ex-party enquiry was held behind the back of the workman. Charge No.-2 is totally concocted and malafide as the workman was on leave on the said date of incident. The facts is workman was on leave and so there is no signature on his attendance register. It is further asserted that cashier was also found responsible for shortage Rs. 7,51,800/- accordingly the cashier was also suspended and later on his suspension has been withdrawn by the management bank. However, there has been serious negligence on the part of cashier. It is further asserted that the workman was made scape goat just to save the cashier and manager of the said bank. No proceeding were initiated against the cashier and manager. It is further asserted that the workman was medically unfit and he has informed to the management bank of his illness even then ex-party proceeding was conducted. The enquiry officer found him guilty of charges without giving any opportunity to workman to defend the charges. Then the workman filed a writ petition before the Hon'ble High Court in which the Hon'ble High Court directed the workman to raise the dispute before the Assistant Labour Commissioner (C) Patna under Industrial Dispute Act, 1947. Then the workman raised his dispute sent the same is referred to this tribunal by the appropriate government for adjudication. The workman seek relief the ex-party enquiry as conducted by the management bank is totally unjust and not sustainable in law. Further the order passed by the Disciplinary Authority on 29.07.2009 regarding dismissal of the workman and further order of Appellate Authority dt- 06.05.2010 and order of DGM dt- 27.05.2010 to affirm the order of dismissal of the workman from the service are illegal unjust and improper that should be quashed with a direction to the management to reinstate the workman to his post and position with all consequential benefits.

3. On the other hand the management bank filed written statement and mentioned there in, the claim of the workman is not maintainable either in law or on facts. As the workman, while working as sub-staff at Buxar branch of the Canara Bank from 29.05.1999 to 13.06.2007 was charged for the following of acts of misconduct.

(i) While working as a cash peon at Buxar of Canara Bank on 31.05.2007, the workman accepted Rs. 5000/- cash from one Dashrath Pandey SB A/C No.- 20836 for depositing the same in the said account but the workman without depositing the said amount returned the counterfoil of pay-in-slip affixing cash receipt seal along with pass book duly making the entry of Rs. 5000/- manually and putting the date as 03.05.2007.

(ii) Rajesh Kumar, the then cashier of the Buxar Branch on 07.06.2007 had given Rs. 7,51,800/- for bundling to the workman but the workman left the said Branch of the Canara Bank without giving back the said amount of cash to the said cashier and absconded from the Buxar Branch of the Canara Bank.

It is further asserted that the bank has lodged FIR against the workman on 07.06.2007 and police has submitted that charge sheet U/S- 409 of I.P.C against the workman and the case is pending for trial. It is further alleged that enquiry was conducted against the workman in respect of two charges issued on 28.11.2007. it is further asserted that preliminary enquiry was conducted on 22.10.2008 and regular enquiry was conducted from 10.11.2008 to 30.01.2009. The enquiry was started with some delay as the workman was in custody on account of the above F.I.R regarding theft of Rs. 7,51,800/- from the Buxar branch. It is further asserted that workman attended the preliminary enquiry on 22.10.2008 wherein he denied the charges and then regular enquiry was started from 10.11.2008. On 10.11.2008 the workman attended the regular enquiry and sought postponement of the said enquiry on ground that matter was sub-judice in the court but workman has filed any stay order of the court. Accordingly enquiry officer had proceeded the enquiry on 10.11.2008. On that day workman attended the enquiry proceedings at 3.00 P.M and requested for 10-15 minutes of time to participate in the disciplinary proceedings but he did not turn up. Then next date for enquiry was fixed on 19.11.2008. It is further asserted that next day of enquiry on 19.11.2008 was again adjourned on the fax message of the workman about his illness. It is further asserted that the proceeding of 19.11.2008 was sent to the

workman by registered post but the same was returned undelivered with the endorsement on that “ Refused to Accept “. Thereafter workman was informed about the next date of enquiry 24.12.2008 but workman always filed petition for seeking adjournment on the pretext of illness and other ground. However workman never produced any documents to justify his stand for adjournment. It is further asserted that the workman deliberately did not participate in enquiry proceeding then enquiry officer was bound to initiate ex-parte enquiry against the workman and finally he concluded the enquiry on 30.01.2009. The enquiry officer had submitted his findings on 05.05.2009 wherein the enquiry officer found the workman guilty of the said charges leveled against him. It is further asserted that during enquiry proceeding 60 documents were produced from the management side and witnesses have also been examined in the support of the charges. It is further asserted that the enquiry officer sent his findings report to the workman to with the direction to file his reply for which workman has made his submission vide letter dt- 26.05.2009 which was unsigned enclosing the medical certificate about his illness. It is further asserted that disciplinary authority after scrutinizing the submission as placed by the workman, proposed punishment of dismissal from the service of the Canara Bank. It is further asserted that the workman was offered an opportunity of personnel hearing on 28.07.2009 but the workman failed to make use of this opportunity. It is further asserted that being aggrieved with the order of the disciplinary authority, preferred an appeal the workman was given a personal hearing and his submissions were heard and recorded. The Appellate Authority after scrutinizing of the materials confirmed the punishment awarded by the disciplinary authority vide order dt- 06.05.2010. it is further asserted that the workman was given full reasonable opportunity during enquiry proceeding and the enquiry officer never violated the principle of natural justice in conducting the enquiry against the workman. Accordingly the enquiry as conducted by the enquiry officer was fair and proper and findings of the enquiry officer is legal and justified.

4. Initially the workman has filed a complaint application before this tribunal sub-section-(1 & 2) of section - 2A of the Industrial Dispute (Amendment) Act, 2010 on 01.10.2015 and accordingly the said case was numbered as I.D.Case No.- 15(C) of 2015. Later on a reference case of the same parties is received from the appropriate Govt. with direction to adjudicate the dispute that reference was received to this tribunal on 26.02.2016 and this case was numbered as Reference Case No.- 03(C) of 2016, later on the prayer of the both sides the Reference Case No.- 03 (C) of 2016 got to be attached with I.D. Case No.- 15 (C) of 2015 vide order sheet dt- 03.06.2016 and till that date the management side have already examined two witnesses on the issues of fairness of propriety of domestic enquiry and the workman side did not adduce evidence rather made prayer to close the evidence of his side. Record also shows that after hearing of both the sides this tribunal passed order on the point of domestic enquiry on 25.05.2016, holding the domestic enquiry against the delinquent (workman) was not fair and proper and also gave liberty to the management to produce witnesses and documents for proving the charges for final adjudication of the matter. Record shows that thereafter management side produced four witnesses, in the mean time workman side file a petition on 25.07.2018 with prayer to segregate the I.D.Case No.- 15 (C) of 2016 from Reference Case No.- 03 (C) of 2016 which were amalgamated vide order dt- 03.03.2016 and it is also prayed from the workman side that the order sheet, statement of claim, written statement, reply to the written statement, evidences on the point of domestic enquiry and evidence on merit of both the sides, petition filed by the both the sides should be adopted in the Reference Case No.- 03 (C) of 2016. After hearing representative of the workman and the management side, this tribunal passed the order i.e the order sheet shows that statement of claim, written statement, reply to written statement, evidences on the point of domestic enquiry and petitions filed by the both the sides in I.D.Case No.- 15(C) of 2016 is adopted in Reference Case No.- 03(C) of 2016 vide order dt- 06.12.2018. Record shows that the adoption of all the documents and evidence as led in I.D.Case No.- 15(C) of 2016 by both the sides was again allowed to be transferred in Reference Case No.- 03(C) of 2016 vide order dt- 14.03.2019. After adopting all the documents and earlier deposed evidences in from I.D.Case No.- 15(C) of 2015 to this Reference Case No.- 03(C) of 2016 vide order dt- 16.12.2018 the management produced another three witnesses and close the evidence on 16.04.2019. Workman side also adduced evidences and produced two witnesses of its side.

FINDINGS

5. In order to establish its claim the management of Canara Bank examined altogether eight witnesses who are namely M.W-1 Kanhaiya Lal, M.W-2 Rejesh Kumar, M.W-3 Rama Shankar Yadav, M.W-4 Binod Kumar, M.W-5 Rajendra Pd Sharma, M.W-6 Dinesh Kumar Mishra, M.W-7 Madan Prasad Verma, M.W-8 Ranjan Ghoshrave.

6. On the other hand workman side examined altogether two witnesses the namely W.W-1 Krishna Kumar Mishra (workman himself) and W.W-2 Surendra Kumar Mishra. Besides, oral evidence, workman filed some documents and get it marked as under –

Ext.-W-	Leave application dt- 02.05.2007.
Ext.-W/1-	Leave proceeding dt- 12.05.2007
Ext.-W/2-	Photo copy of attendance register from the month of June-2007.
Ext.- W/3-	Marriage invitation Card of Khushboo Mishra, D/O- Krishna Kumar Mishra.

7. First of all this tribunal scrutinizes the evidence of management side M.W-1 Kanhaiya Lal is the branch manager of Canara Bank, Main Branch, Biharshariff who deposed before this tribunal on 19.04.2018. He has stated before this tribunal he was posted in Main Branch of Canara Bank, Buxar from December-1998 to April-2009. This witness further stated that on the date of occurrence on 07.06.2007 he was deputed as supervisor at deposit counter in place of Sri G. Upadhaya (officer). This witness further stated that on the alleged date of occurrence Sri Krishna Kumar Mishra was posted as cash peon. This witness further stated that at about 1.30 to 2.00 P.M cashier Rajesh Kumar told he has given Rs. 7,51,800/- (Rs Seven Lakhs Fifty One Thousand Eight Hundred) to Krishna Kumar Mishra to make its bundle and now Krishna Kumar Mishra is not available in the premises. This witness also stated that Rs. 7,51,800/- was found shortage upon counting the cash of the day. This witness further stated that after this incident the branch manager Binod Kumar after seeking permission from Circle Office, filed a FIR against the Krishna Kumar Mishra. This witness further stated that the search was made of the branch and one pant was recovered but no bodily search of any staff was made. This witness further stated that due to the shortage Rs. 7,51,800/- there was hue and cry in the branch and the Krishna Kumar Mishra was found absent from the bank premises. This witness further stated that a departmental enquiry was also initiated against the Krishna Kumar Mishra and this witness further stated that all the staff of the branch including him were inquired by the bank during internal enquiry.

In cross-examination this witness categorically stated in para-9 of the cross-examination, that he does not know Krishna Kumar Mishra was on leave from 04.06.2007 to 12.06.2007 on account of the marriage of his daughter and he further prove the leave application given by the Krishna Kumar Mishra on 02.05.2007 and sanctioned order of the D.G.M dt- 12.05.2007 as Ext.-W & W/1 respectively. This witness also stated in para-10 of his cross-examination that when staff of a bank got sanctioned of leave then during the period of his leave, endorsement of leave is shown in the attendance register. This witness further denied Krishna Kumar Mishra has availed leave from 04.06.2007 to 12.06.2007 in connection of his daughter marriage and also denied this facts that he never visited the said bank branch.

8. M.W-2 Rajesh Kumar is the cashier of Canara Bank, Branch Bhahadurpur who deposed before this tribunal on 27.06.2018. This witness stated in his evidence that on 07.06.2007 he was posted as cashier in the Buxar Branch of the Canara Bank and on that day he was doing work at cash counter. This witness further stated that Krishna Kumar Mishra was cash peon in the said branch and he was present in the branch on 07/06.2007. This witness further stated that he has given Rs. 7,51,800/- cash to Krishna Kumar Mishra to make bundle and to endorse seal of the bank but Krishna Kumar Mishra did not return the said money Rs. 7,51,800/-. Krishna Kumar Mishra left the bank premises, saying he was going for nature's calls. When Krishna Kumar Mishra did not return back by 12.30 P.M, then he reported about the incident to branch manager Binod Kumar and supervisor Niraj Jain, thereafter, bank authority filed FIR. This witness further stated that a departmental enquiry also initiated against the Krishna Kumar Mishra and he has also deposed during the course of enquiry.

In para-8 of the cross-examination this witness categorically stated that the post of cashier is Canara Bank rotational. On 07.06.2007, Binod Kumar was the cash in-charge. He has given cash to him and he gave Rs. 7,51,800/- to Mishraji counting the money in the presence of Mishraji. The denominations of currency were of Rs. 1000, 500, 100, 50, 10, 5, 2, 1 Rs. In para-11 of the cross-examination this witness categorically stated that he has not taken receipt from the Mishraji when he handed Rs. 7,51,800/- to him because there is no rules as such in day to day working of the bank. In para-12 of the cross-examination this witness categorically stated that he has deposed during the enquiry Rs. 60,000/- was found at 2.00 P.M on the place where Mishraji was making bundle of the cash. This witness also stated that during the course of enquiry he told Mishra arrived at bank branch on 07.06.2007 at about 9.45 A.M. In para-17 of the cross-examination that he was not aware that Mishraji, got sanctioned of leave from 04.06.2007 to 12.06.2007 and he further stated in cross-examination that he can not say whether Mishraji has put his sign on the attendance register on dt- 07.06.2007 or not and he further denied that Mishraji has not taken money from him and further denied there is embezzlement of money within the bank premises.

9. M.W-3 Rama Shankar Yadav is Arm Guard of the Canara Bank, Buxar Branch. He deposed before this tribunal on 25.07.2018. He stated before this tribunal that he is posted in the Canara Bank, Buxar Branch as Arm Guard from 23.08.2004. This witness further stated that on 07.06.2007 he was posted in the said branch and on that very date Krishna Kumar Mishra had come in the bank premises and he met Krishna Kumar Mishra in the morning. This witness further stated that on 07.06.2007 Krishna Kumar Mishra had arrived in the bank premises between 9.45 A.M to 10.00 A.M. Krishna Kumar Mishra was doing the cash work. This witness further stated that at about 2.00 P.M he came to know that there is shortage of cash and on 07.06.2007 itself he made search of the bank premises and the search of all the staff but the shortage cash was not found in the premises. This witness further stated that on that day of about 10.30 A.M he went to extension counter of the bank at collectorate to give cash and when he returned back at 2.00 P.M Mishra ji was not in bank premises.

In cross-examination this witness categorically stated that he does not know whether bank has lodged a case against the Mishraji but he heard about the shortage of Rs. 7,51,800/- in the said branch. This witness also stated in cross-examination that on the instruction of branch manager, he made search of the premises between 3.00 to 3.30

P.M. In para-6 of the cross-examination this witness categorically stated that he does not know, Mishraji was on leave on the day of occurrence rather he has seen Mishra doing work in the said branch on that day. This witness further denied that, on 07.06.2007 Krishna Kumar Mishra was on leave and further denied he has not made any search of the bank premises and search of employee on 07.06.2007.

10. M.W-4 Binod Kumar who deposed before this tribunal on 09.10.2018. This witness stated before this tribunal that he was posted in Buxar Branch of Canara Bank from the 29.08.2005 to July-2007 and he was deputed at extension counter of Canara Bank. This witness further stated that on the alleged date of occurrence due to on leave of two officers of main branch, he was doing his duty at main branch. This witness further stated that on 07.06.2007 cashier Rajesh Kumar and cash peon Sri Krishna Kumar Mishra (workman) were on duty but Krishna Kumar Mishra did not put his signature on the attendance register of dated-07.06.2007. This witness further stated that Daftari Upendra Mishra informed him between 1.30 to 2.00P.M that Krishna Kumar Mishra is not present in the branch and thereafter he informed to the Senior Manager, Chasara, about Krishna Kumar Mishra left the branch without any permission but senior manager did not take notice of this. This witness further stated that at about 4.00P.M cashier Rajesh Kumar and other employee Kanahiya lalji, Dinesh Kumar Mishra and Sharmaji reported about shortage of cash of amounting Rs. 6,16,800/- at that time Senior Manager, Chasara was also present. This witness further stated that chasara senior manager immediately gave direction to Kanahiya Lal, Dinesh Kumar Mishra and Sharmaji to locate the exact difference after tallying the receipt of cash. finally it was detected at about 8.30P/M there was shortage of Rs. 7,51,800/-. This witness also stated that on 07.06.2007 Krishna Kumar Mishra was not receiving cash from the customer. This witness further stated that on that very day branch was closed at 12.00 night and before closing of the bank statement of all the employee was recorded but no police has arrived prior to the closing of the branch on that day. This witness also stated that there is no cash recovered from the drawer of Krishna Kumar Mishra and no challan of any customer was recovered.

In cross-examination this witness categorically stated in para-10 that he has not received any written order of deputation for the main branch on dt-07.06.2007. The facts is on getting oral direction of senior manager Om Prakash, chasara he was doing duty at main branch. This witness also admitted in pra-11 when ever the cash is taken out from the strong room its entry is used to be maintained on register. This witness categorically stated in para-12 of the cross-examination that he does not know, whether any entry of cash delivered by the cashier to Krishna Kumar Mishra was maintained in any register. In para-13 of the cross-examination this witness admitted this facts that he was not aware, Krishna Kumar Mishra has already got sanction of leave, but he has seen Krishna Kumar Mishra doing work in cash section on the alleged day. This witness further stated that on that very day he had not put his signature on any bundle of currency note. This witness further stated that he was not intimated how many bundle and packets of currency notes were given to the Krishna Kumar Mishra and he did not see the person handing over the cash to Krishna Kumar Mishra. This witness also admitted that in pra-13 that he did not see Mishraji leaving the bank premises at about 1.30 P.M. This witness further denied this fact that Krishna Kumar Mishra was not present on that day and further denied that he was on leave in the connection of the marriage of his daughter and also denied this facts Krishna Kumar Mishra did not put signature over attendance register. In para-15 of the cross-examination this witness categorically admitted that bodily search of the employee was conducted but who conducted body search that he does not remember.

11. M.W-5 Rajendra Pd Sharma who deposed before this tribunal on 19.12.2018 this witness stated before this tribunal that he was posted in the Buxar branch of the Canara Bank, from the August 2006 to October-2014 and on 07.06.2007 he was present in the branch. This witness further stated that he saw Krishna Kumar Mishra present in the branch at about 10.30 A.M. This witness further stated that Sri Mishra was doing job of cash peon and on that very day, he was making bundle and packet of the currency note in the branch. This witness further stated that he came to know between 1.30 P.M to 1.45 P.M, Mishraji was not present in the bank. This is reported by the Rajeshji. This witness further stated that Rajeshji was tallying the cash and he found, there was shortage of cash amounting Rs. 7,51,800/-. and accordingly on the instruction of bank manager the entry of shortage amount is made in the double lock register. This witness further stated that on that very day guard Rama Shankar Singh made search of the premises and his body was also searched by the guard. This witness further stated that FIR was lodged against the Krishna Kumar Mishra regarding shortage of cash. This witness further stated that he can not say whether any departmental enquiry was conducted against the Mishraji or not.

In cross-examination this witness categorically stated in para-5 that on 07.06.2007 he arrived in the bank premises about 10.30 A.M and his duty was on saving bank account counter. This witness further stated that he does not know that Mishraji was on leave from 04.06.2007 to 12.06.2007 on account of the marriage of / his daughter. In para-6 of the cross-examination this witness categorically admitted that the employees who is on leave does not put his signature on the attendance register. This witness further stated that he did not see Rajesh Kumar handing over money to Mishraji. This witness further stated in para-6 that he had seen Mishraji coming to the bank premises on that day. In para-7 of cross-examination this witness categorically admitted that bodily search of all employees was made but no paper was prepared of the bodily search. Further this witness categorically denied that he has deposed on the basis of the documents shown to him and further denied that he has deposed in the connivance of other bank employees.

12. M.W-6 Dinesh Kumar Mishra who deposed before this tribunal on 24.02.2019 this witness stated before this tribunal that he was posted in the main branch, Canara Bank, Buxar from October-2002 to June-2008 and on the alleged date of occurrence he arrived from the bank premises at about 9.45 A.M and he was doing his duty on deposit section. This witness further stated that he met Krishna Kumar Mishra of the very day at about 10.00 A.M. This witness further stated that at about 1.00 P.M cashier Rajesh Kumar came to him and asked have you seen Krishna Kumar Mishra and at that time Krishna Kumar Mishra was not present. This witness further stated that at about 3.30 P.M cashier Rajesh Kumar reported, there is cash shortage and ultimately it was detected the shortage of cash was about Rs. 7,51,800/-. This witness further stated that he did not see any cash or cash slip at the place, where Krishna Kumar Mishra was doing work.

In para-4 of the cross-examination this witness categorically admitted that he was not aware that Krishna Kumar Mishra was having sanction of leave from 04.06.2007 to 12.06.2007. In para-5 of the cross-examination this witness categorically stated that he does not know, there was a case between the bank and Krishna Mishra. This witness further admitted that Krishna Kumar Mishra was a peon and he never worked the job of cashier. This witness admitted that in para-5 that this is a duty of cashier to make packet of currency notes in hundred pieces after sorting the cash and this witness further admitted in cross-examination that he did not see Krishna Kumar Mishra taking the cash but this witness denied that this facts Krishna Kumar Mishra was not present in the bank premises due to the leave and also denied there is no involvement of Krishna Kumar Mishra in the shortage of cash and denied this is total liability of cashier Rajesh Kumar. This witness further denied that the cashier in connivance of other embezzled the cash.

13. M.W-7 Madan Prasad Verma who deposed on 14.03.2019. This witness stated before this tribunal that he is posted in main branch of Canara Bank, Buxar from 23.04.1979. He used to come bank between 10.30 A.M to 11.00 A.M and on 07.06.2007 he arrived at the bank premises at about 10.30 A.M and he was remained in the branch by 1.15 P.M. This witness further stated that Krishna Kumar Mishra was present in the bank premises. This witness stated that Krishna Kumar Mishra left the bank prior to him when he left the bank. This witness further stated that on that very day at about 6.30 P.M he nephew of part time employee Shanta Ram reported to him, the branch manager was calling. On this intimation he came to bank premises and manager sahib reported, Mishraji is missing with Rs. Six Lakhs. This witness further stated that he told to manager sahab he saw the Mishraji leaving the bank premises between 12.45 P.M to 1.00 P.M.

In cross-examination this witness categorically admitted in para-3 that he is not a permanent staff of the bank. He is a commission agent but he used to visit the bank premises. This witness further admitted that he used to deposit the cash what he collects from the customers. He further stated that he does not know Mishraji was on leave in connection with the marriage of his daughter from before 07.06.2007. This witness further denied that he had deposed in this case on the pressure of the bank.

14. M.W-8 Ranjan Ghoshrahe who deposed before this tribunal on 16.04.2019 he stated before this tribunal that Circle Office, Patna had designated him as enquiry officer in the case of Krishna Kumar Mishra. This witness further stated that two charges were attributed against the Krishna Kumar Mishra the first charge was Krishna Kumar Mishra has taken Rs. 5000/- from the Dasarath pandey to deposit the same in his account but money was not credited in the account of Dasarath Pandey but its entry was made in the pass book by the Krishna Kumar Mishra. The 2nd charge was cashier Rajesh Kumar has given Rs. 7,51,800/- cash to Krishna Kumar Mishra to make bundle of currency notes but Krishna Kumar Mishra did not return the money and fled away with the cash. This witness further stated that first of all he conducted the preliminary enquiry against the Krishna Kumar Mishra and handed over all the available documents and also gave permission to him to depute any bank employee as a defence representative. He further stated that Krishna Kumar Mishra received the documents and put his signature but later on he cut the signature. This witness further stated that on the first day of enquiry Krishna Kumar Mishra was present but he did not participate in the enquiry. On 10.11.2008, however Krishna Kumar Mishra was present in Circle Office, Patna at about 11.00 A.M and reported he will come by 3.00 P.M. Mishraji again came at 3.00 P.M and he told, he will present within 10-15 minutes but he did not return back. This witness further stated that on the request of Krishna Kumar Mishra, being the enquiry officer gave him five adjournments on 10.11.2008, 19.11.2008, 24.12.2008, 07.01.2009, 31.01.2009 even then Sri Mishra did not participate in the enquiry. This witness further stated that during the course of enquiry he recorded the statement of cashier, Arm Guard, customer Dasarath pandey, and also recorded the statement of other employees of the bank and after concluding the enquiry, he has submitted his enquiry report. He found the charges as levelled against the Krishna Kumar Mishra was true. This witness further stated that he used to send the copy of the proceeding of each date to the Krishna Kumar Mishra during enquiry.

In cross-examination this witness admitted in para-6 that it was occurrence of 07.06.2007. This witness further stated that he has seen the documents of leave of the CSE employee, the CSE employee was having order of sanctioned leave from 04.06.2007 to 12.06.2007 in connection with marriage of his daughter. This witness further stated that when ever any employee is on leave, the endorsement of leave is shown against the name of the said employee in the attendance register, but he saw the endorsement of "P" against the name of CSE on the date of occurrence in the attendance register. This witness further stated that no paper of cancellation of leave was produced

during the enquiry. This witness further stated that the CSE was suspended on 13.06.2007. He can not say whether any show cause or explanation was asked from the employee prior to his suspension. This witness further stated that CSE employee received explanation letter on 16.08.2007 after suspension and the CSE received the charge sheet after five months of the suspension. This witness further stated in para-6 of the cross-examination that there was a charge against the CSE employee, he left the bank with the cash of Rs. 7,51,800/- but Rajesh Kumar cashier stated before him during the preliminary enquiry “ he does not remember how much cash was given to Krishna Kumar Mishra and the details of Rs. 7,51,800/- as given by him before the D.M Sahib was on the advise of seniors of the bank. In para-7 of the cross-examination this witness stated that he does not know the Krishna Kumar Mishra was acquitted from the charges of defalcation of Rs. 5000/- by the court. In para-8 of the cross-examination this witness stated that he does not know, this tribunal has found the domestic enquiry conducted by him was unfair.

15. On the other hand the workman Krishna Kumar Mishra examined himself as W.W-1 who deposed before this tribunal on 20.05.2019. He has stated before this tribunal that he was doing the job of peon in the Buxar branch of Canara bank. He further stated that on 31.05.2007 Dasarath Pandey had not given any Rs. 5000/- to deposit in saving bank account and it is also false to say, he has given the counter foil with the seal of the bank to the Dasarath Pandey and he had made the entry of Rs. 5000/- in his pass book. He further stated that Dasarath Pandey had not come on 22.06.2007 in the branch for the withdrawal of Rs. 4500/-. This witness further stated that he does not know Dasarath Pandey had come on 22.06.2007 in the bank premises and made complaint to the branch manager about not crediting the said amount in his saving bank account. This witness further stated that a criminal case has been lodged against him for the defalcation of Rs. 5000/- but he was acquitted from the court. This witness further stated that he was suspended on 13.06.2007 but no show cause or notice was given to him prior to suspension. This witness further stated that bank never asked any explanation on 21.08.2007. This witness further stated that he was posted in the Canara Bank, Buxar branch from the 29.05.1999 to 02.06.2007 as a peon and he was on leave from 04.06.2007 to 12.06.2007. This witness further stated that he has given leave application on 02.05.2007 that was sanctioned and he proved his leave application and the order of sanctioned of leave i.e already marked Ext.-W & W/1 by the M.W-1. This witness further proved the attendance register of June-2007 i.e marked as Ext.-W/2. This witness further stated that he has taken the leave on account of marriage of his daughter and after giving the leave application he went to Kolkatta on 04.06.2007 and the marriage was scheduled on 07.06.2007. This witness further stated that after the marriage ceremony, he came back on 12.06.2007 from the Kolkatta. This witness further stated that he was never present in the bank during his sanctioned leave period. This witness further stated that he was not present in the bank on 07.06.2007, so the allegation as alleged by Rajesh Kumar for giving money to him and making bundle of currency notes is totally false. He further stated that this is totally false that he has taken money and left the bank. This witness further stated that it is also false to say that he was told to return Rs. 7,51,800/- through a letter on 16.08.2007. This witness further stated that he has never receive the charge sheet with suspension letter and he did not get any recommendation of CVO prior to 2nd show cause notice. This witness further stated that his duty was from 10.00A.M to 5.30 P.M and used to put his signature on the attendance register in presence of branch manager. This witness further stated that prior to 04.06.2007 branch manager never put endorsement of “P” against his name in the attendance register. This witness further stated that he has filed a case against the Branch Manager, DGM, Chairman and MD before the Hon’ble Court and these authorities pressurised him to withdraw the case other wise they will implicate in false case that’s why he has been falsely implicated in this case by the bank. He has stated that all the charges as levelled against him is totally false. This witness further stated that his daughter’s marriage was solemnized on 07.06.2007 at Rishara Kolkatta and he has distributed marriage cards to the relatives and friends and he proved the marriage card of his daughter marked as Ext.-W/3.

In cross-examination this witness admitted in para-14 that he was also doing the job of making bundle of cash. In para-15, this witness categorically stated that after leave, when he came to bank premises to join duty on 13.06.2007 he was reported about his suspension but no reason was told. In para-16 of the cross-examination this witness further admitted that branch manager lodged a FIR against him and he surrendered before the court but he has been enlarged on bail after nine months by the Hon’ble Court. In para-17 this witness denied that if the branch manager deputed a employee some where else, branch manager put endorsement of “ P “ against the said employee in the attendance register. This witness again denied that he was in bank premises on 07.06.2007 up to 1.00 P.M and thereafter went to Hawarh by train. This witness further stated that he was in Hawarh from 04.06.2007 itself. This witness further denied in para-20 of the cross-examination that he has defalcated the money for marriage of his daughter and he took the money and went Hawarh to Solemnise the marriage of his daughter. This witness further denied that he does not follow rules of the bank and does not respect of the Senior officers of the bank. In para-22 of the cross-examination this witness admitted that he was informed by the bank about domestic enquiry and he has participated in the enquiry. In para-24 of the cross-examination this witness categorically stated that he has got the marriage card printed at Bhrahmpur Buxar but its receipt is not in his possession. This witness further stated that he has given the marriage card in the bank. The marriage of his daughter was scheduled on 07.06.2007. This witness further denied that this marriage card is forged.

16. W.W-2 Surendra Kumar Mishra is the elder brother of workman Krishna Kumar Mishra, who deposed before this tribunal on 02.07.2019. He stated in examination-in-chief that he has arranged the marriage of daughter of the Krishna Kumar Mishra and boy side was of Dist. Balia but they are settled in Kolkatta. This witness further stated

that the marriage of the daughter of Krishna Kumar Mishra was solemnised on 07.06.2007 for which Krishna Kumar Mishra had arrived in Kolkatta on 04.06.2007 itself and after the marriage Krishna Kumar Mishra returned back on 12.06.2007. This witness further stated that on the request of boy side the marriage of the daughter of Krishna Kumar Mishra was arranged at Rishra Kolkatta.

In para-4 of the cross-examination this witness stated that he has spent maximum in the marriage and Krishna Kumar Mishra contributed some money. They spent total 50-60 thousands in the marriage. He further stated that 40-50 persons attended the marriage. This witness categorically denied that Krishna Kumar Mishra did not arrive on 04.06.2007 in Kolkatta, rather he arrived in Kolkatta on 07.06.2007.

17. It is argued from the representative of the bank that the workman Krishna Kumar Mishra was cash peon at Buxar Bbranch of Canara Bank. Two charges has been attributed against the workman one for not crediting the amount of Rs. 5000/- received from one customer Dhasarath Pandey in his account and he has given a false entry on his pass book putting the date of 31.05.2007 and 2nd charges was, the cashier Rajesh Kumar has given Rs. 7,51,800/- on 07.06.2007 to the workman for making bundle of the currency note but workman managed to flee away from the bank premises without handing over the cash received from the Rajesh Kumar. It is further argued that workman has pur under suspension on 13.06.2007. F.I.R was also lodged against the workman u/s- 409 IPC. It has been further argued that departmental proceeding has been initiated against the workman for the said two charges but he never participated in the enquiry proceeding in spite of having ample opportunity given by the enquiry officer. It is further argued that due to evading attitude of the workman, enquiry officer was bound to proceed ex-party in the departmental proceeding and finally on the basis of the material produced by the presenting officer, the enquiry officer found guilty the workman of the two charges. It has been further argued that initially this case was looked into by this tribunal for the fairness of propriety of the domestic enquiry. This tribunal found the enquiry proceeding is not proper, thereafter management side examined altogether eight witnesses including the enquiry officer as witness No. M.W-8 Sri Ranjan Ghoshrahe and other witnesses were employees of the branch and they supported this facts that workman Krishna Kumar Mishra was present on 07.06.2007 in the bank premises and he became absent after 1.15 P.M and the money given by the Rajesh Kumar cashier to Krishna Kumar Mishra for making its bundle of currency note was found shortage. All the witnesses has thoroughly supported the version of the management moreover in departmental proceeding also the workman was found guilty and thereafter the disciplinary authority passed the dismissal order against the workman and it was also affirmed by the appellate authority. Accordingly the punishment imposed by the management side against the workman Krishna Kumar Mishra was just fair and proportionate of his guilt.

18. On the other hand the representative of the workman argued that the workman Sri Krishna Kumar Mishra was peon in the main branch of the Canara Bank, Buxar. Workman has filed a leave application on 02.05.2007 before appropriate authority of the bank for sanctioning leave from 04.06.2007 to 12.06.2007 in connection with marriage of his daughter i.e marked Ext.- W and his leave has been duly sanctioned by the bank authority i.e Ext.-W/1. It has been further submitted tht the workman has discharged his duty upto 03.06.2007 and he went to Kolkatta on 04.06.2007 in connection with the marriage of his daughter that was scheduled on 07.06.2007 that is evident from the marriage card marked Ext.- W/3. The attendance register of June-2007 i.e marked Ext.-W/2 clearly shows there is no signature of the workman from 04.06.2007 to 12.06.2007. However, the workman has put his signature on the working day of June first, second and the third June was Sunday. It is further argued from the workman sides that workman was not present in the Buxar branch from 04.06.2007 to 12.06.2007 he was in the Kolkatta in connection with his marriage of his daughter i.e also supported by witness W.W-2 the elder brother of Krishna Kumar Mishra. It is further argued that all the charges as attributed against the workman was totally false and frivolous because this tribunal also hold the domestic enquiry conducted by the enquiry officer (M.W-8) was not fair and proper. Thereafter, this tribunal has given opportunity to the management side to prove the case from its side on the merit. It is further argued that not a single chit of paper has been brought on the record by the management side that could suffice the charges of defalcating of Rs. 7,51,800/- by the workman. It is also argued that although management side examined altogether eight witnesses, out of them M.W-8 Ranjan Ghoshrahe was the enquiry officer who also admitted in his cross-examination that charge sheeted employee was on sanctioned leave from 04.06.2007 to 12.06.2007 and he also admitted that no paper cancellation of leave was produced before him during enquiry. Even Rajesh Kumar cashier M.W-2 contradicted his own version in para-8 of the cross-examination. By saying On 07.06.2007 he does not remember how much money has been given to him by the Binod Kumar from cash volt likewise arm guard Sri Rama Shankar Yadav (M.W-3) is also not a eye witness as himself admitted he left the branch for extension counter at 10.30 and came back to 2.00 P.M. Witness Binod Kumar (M.W-04) deposed in his evidence, at about 4.00 P.M cashier Rajesh Kumar, Kanahiya Lal, Dinesh Kumar Mishra and Sharmaji reported there is shortage of Rs. 6,16,800/-. So witness Binod Kumar also contradicts the version of Rajesh Kumar rearding hand over the cash Rs. 7,51,800/- to the Krishna Kumar Mishra as per charge. It is further argued that there is contradiction in evidence of all the witnesses. Moreover Arm Guard on the duty was also not produced by the management sides. It is further argued that the enquiry officer(M.W-8) who was again turned up from the management side even he did not disclose about any documents of the bank rather he deposed that he does not know, his enquiry was found not fair and proper by this tribunal. It is further argued that since the enquiry was not fair and proper, the order of the disciplinary authority

regarding dismissal of the workman from the service is totally groundless and further the order of the appellate authority is also unjustified i.e fit to be set aside. The workman has thoroughly proved his case by his oral and documentary evidence, so it is prayed that order of the disciplinary authority of dated-29.07.2009 be set-aside and workman should be reinstated to his service with all consequential benefits.

19. Considering all the facts and circumstances of the case and the materials on record as discussed above, this tribunal finds that initially this case was delt regarding fairness and propriety of domestic enquiry conducted by the management bank against the delinquent employee (CSE) Sri Krishna Kumar Mishra the workman for which both the parties produced evidence oral and documentary evidence before this tribunal. After taking into account the materials placed by both the sides before this tribunal, this tribunal found the domestic enquiry as conducted by the enquiry was not fair and proper vide order dt- 25.05.2016. This tribunal further finds that this tribunal gave opportunity to the management to produce the documents and the witnesses to prove the charges as leveled against the charge sheeted employee for final adjudication of the issue. This tribunal further finds that the management side examined altogether eight witnesses including Ranjan Ghoshrahe (M.W-8) the enquiry officer. This tribunal further find that two charges has been attributed against the charge sheeted employee Sri Krishna Kumar Mishra regarding not crediting entry of Rs. 5000/- received from one customer Dasarath Pandey in his account and secondly Rs. 7,51,800/- cash received from the cashier Rajesh Kumar for making its bundle but the same amount is not returned back by the charge sheeted employee (Sri Krishna Kumar Mishra) and left the bank premises on 07.06.2007. This tribunal find that these two charges has to be proved by the management bank but not a single document has been placed by the bank / management during the course of evidence that could suffice the shortage of money found by the bank on the alleged dt-07.06.2007. However, one witness namely M.W-4 Binod Kumar categorically admitted in cross-examination that when ever the cash is taken out from the strong room its entry used to be maintained on the register but no register as such is produced by the bank / management that could show that Rs. 7,51,800/- was handed over to be by the Rajesh Kumar Cahsier to the charge sheeted employee (Krishna Kumar Mihra) moreover, Rajesh Kumar the cashier who also deposed as M.W-2 before this tribunal gave different statement and he also did not produce any paper of giving Rs. 7,51,800/- cash to the Krishna Kumar Mishra for making bundle further there is no cohesion and consistency in the evidence of other witnesses regarding giving Rs. 7,51,800/- by Rajesh Kumar to the Krishna Kumar Mishra and amount is taken away by the Krishna Kumar Mishra from the bank. This tribunal further finds that it is alleged by the bank that FIR has been lodged against the Krishna Kumar Mishra but no proff of said FIR is brought on the record by the management bank. This tribunal further find that management produced the enquiry officer Ranjan Ghoshrahe (M.W-8) also did not give any concrete evidence before this tribunal that could show that he has rightly found the charges true against the charge sheeted employee after conducting enquiry because not a single chit of paper has been produced by the enquiry officer (management / bank) to suffice the charges as alleged against the charge sheeted employee. This enquiry officer even did not prove the proceeding of the enquiry in his evidence. This tribunal further find that all the witnesses of the management categorically admitted this facts that cash peon Krishna Kumar Mishra has got sanction leave from 04.06.2007 to 12.06.2007 and this is duly proved by the workman side placing the application of leave and it is sanctioned order the Ext.-W & W/1. This tribunal further finds that workman side examined altogether two witnesses including the workman who categorically denied this facts that he was present in the bank on 07.06.2007 and he was ever received any cash amount of Rs. 7,51,800/- from the hands of Rajesh Kumar rather he was on leave from 04.06.2007 to 12.06.2007 as he went to the Kolkatta in connection with marriage of his daughter schedule on 07.06.2007 at Rishra Kolkatta and in this connection, workman has filed the marriage card of his daughter showing the date of marriage 07.06.2007 at Rishra Kolkatta i.e marked Ext.- W/3. Moreover, workman side also filed attendance register of June-2007 i.e marked Ext.-W/2 that shows that there is no signature of Krishna Kumar Mishra on the date of 04.06.2007 to 12.06.2007. This tribunal further finds that the management side could not controvert the version of workman during the course of cross-examination. This tribunal further find that W.W-2 Surendra Kumar Mishra is the elder brother of workman Sri Krishna Kumar Mishra has duly corroborated the version of Krishna Kumar Mishra as he categorically admitted that his brother Krishna Kumar Mishra had come to the Kolkatta on 04.06.2007 in connection with the marriage of his daughter and he returned back on 12.06.2007.

20. Thus on scrutinizing all the materials available on the record as discussed above and the argument as advanced on behalf of the both the sides this tribunal find and hold that the management side has been totally failed to prove the charges as leveled against the charge sheet employee (Krishna Kumar Mishra) for which a domestic enquiry was conducted as domestic enquiry was also found not fair and proper and later on management has been totally failed to suffice the charges as leveled against the charge sheeted employee, because not a single document related to the charges has been produced by the bank management during the course of the evidence. Accordingly this tribunal find and hold that the punishment imposed against the workman Sri Krishna Kumar Mishra “ dismissal without notice “ is not sustainable. Thus on the basis of above findings this is the considered opinion of the tribunal, the action of the management canara bank to impose punishment of dismissal without notice to the workman Sri Krishna Kumar Mishra was not proper and proportionate. Accordingly, the management bank is directed to reinstate the workman to his post from 13.06.2007 and to make payment of his salary accrued since the date of dismissal order dt- 29.07.2009 within two months from date of publication / gazette of this award.

This is my award accordingly.

Dictated & Corrected by me.

Sd/- 24.08.2023

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2023

का.आ. 1697.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट (15 (C) of 2019) प्रकाशित करती है।

[सं. एल-12011/26/2019- IR(B-II)]

सलोनी, उप निदेशक

New Delhi, the 13th October, 2023

S.O. 1697.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 15 (C) of 2019) of the *Indus.Tribunal-cum-Labour Court Patna* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12011/26/2019- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA.**Reference Case No.:- 15 (C) of 2019**

Between the management of The Circle Head, Punjab National Bank, Circle Office, G.M. Road, Darbhanga-846004 and their workman Shri Sanjay Kumar, Head Cashier represented through by the General Secretary, Punjab National Bank Staff Union (Bihar), 2nd Floor, Saboo Chamber Near Hotel Republic Exhibition Road, Patna (Bihar) 800001.

For the management:-

Mrs. Preeti, Dy. Manager, HRD.

Sri Nand Mohan Das, Manager.

For the workman:-

Sri B. Prasad, President, Bank Employees Federation, Bihar.

Present:-

Manoj Shankar
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dated- 16th May 2023

By the adjudication order no.- L-12011/26/2019-IR (B-II) New Delhi, dated- 26.08.2019 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as “the Act”), the following dispute between The Circle Head, Punjab National Bank, Circle Office, G.M Road, Darbhanga- 846004 and their workman Shri Sanjay Kumar, Head Cashier, represented thorough by the General Secretary, Punjab National Bank Staff Union (Bihar), 2nd Floor, Saboo Chamber, Near Hotel Republic Exhibition Road, Patna (Bihar) 800001 for adjudication to this tribunal:-

SCHEDULE

“Whether the action of the management of Punjab National Bank, to impose the punishment of dismissal without notice on Sri Sanjay Kumar, Head Cashier, in Ladanie Branch (Madhubani) vide order dt- 15.11.2018 is legal & Justified? If not, what relief the workman was entitled to?”

2. After receipt of the reference / notification, notice was issued to the parties concerned. Both parties appeared before this tribunal but the workman did not file any statement of claim inspite of knowing the proceeding of the case.

3. From perusal of the case records, it shows that after issuance of notice, both parties appeared before this tribunal on 07.11.2019 but workman did not file any statement of claim. On 07.11.2019 representative of the said union Sri B. Prasad appeared before this tribunal and prayed for time for filing authority letter on next date on 09.12.2019. On 09.12.2019, 30.01.2022/03.02.2020, 16.03.2020, 27.04.2020, 04.06.2020, 03.08.2020 and

02.09.2020 workman remained absent. Again notice was issued to the workman vide memo no.- 39 dt- 08.02.2022 but workman was absent. On 03.02.2022 representative of the said union appeared and filed hazari but did not file any authority letter in the light of order sheet dt- 07.11.2019. In the light of order sheet dt- 03.02.2022 registered notice was issued to the workman vide memo no.- 39 dt- 08.02.2022 through registered post No.- RF 219973919IN dt- 14.02.2022. On 08.03.2022, 27.04.2022, and 19.05.2022 workman himself remained absent. Order sheet dt- 27.04.2022 shows that the registered notice was not returned back to this tribunal that shows registered notice was well served upon the workman side but yet workman did not turn up rather he lost his interest in this case but yet for the ends of justice, on 27.04.2022 last chance was given to the workman to contest the case but it went in vain. On 19.05.2022 workman remained absent. Continuous absence of workman for the last three year itself shows workman has no interest at all in this case perhaps he has no grievance at all now.

4. In view of the above aforesaid discussion this is a considered opinion of this case since workman has no dispute, hence this tribunal has no alternative but to pass “No Dispute Award” in this case. Thus this tribunal pass “No Dispute Award” accordingly. This award is effected after date of publication in gazette.

This is my award accordingly.

Dictated & Corrected by me.

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 16 अक्टूबर, 2023

का.आ. 1698.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 63/2014)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **05/10/2022** को प्राप्त हुआ था।

[सं.एल-20013/01/2023-आई. आर. (सी.एम-1)]

मणिकंदन एन., उप निदेशक

New Delhi, the 16th October, 2023

S.O. 1698.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 63/2014**) of the **Central Government Industrial Tribunal-cum-Labour Court NO. 1, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Air India Limited** and their workmen, received by the Central Government on **05/10/2023**.

[No. L-20013/01/2023 – IR (CM-I)]

MANIKANDAN N., Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

NEW DELHI

Present : **Justice Vikas Kunvar Srivastava (Retd.)**
(Presiding officer)
CGIT, Delhi-1

(In ID. No. 63/2014)

Shri F.G.Runda,
Employee No. 268950,
GG-2; 35-C, Vikaspuri,
New Delhi-110018.

Claimant

Versus

Air India Limited,
Through its General Manager(P),
Northern Region, Personal Department,
IGI Airport, Terminal – 1B,
New Delhi – 110037

Management ...

Shri Inderjit Singh, A/R for the claimant.

Shri Lalit Bhasin, A/R for the management.

AWARD

Prologue

An application under section 2A (2) of the Industrial Dispute Act, 1947, was moved before this tribunal (CGIT-1 Delhi) by the claimant/workman Shri F.G. Runda on 09.07.2014, with allegations in the claim statement that, he was working as Senior Traffic Assistant at Booking Office, Safdarjung Airport, New Delhi when his services were terminated illegally and arbitrarily by the opposite party on 22.01.2013.

2. It is further alleged in the statement of claim that despite good service record, the workman/claimant was issued a charge sheet dated 11.02.2003 to the following effects:

This is further to letter No.DEL/G.M. © VIG/DISC/2024/2021 dated 22.12.00 placing you under suspension.

That during the year -1999 you were posted at Indian Airlines Booking Office, S.Jung Airport, New Delhi, as Sr. Traffic Asstt. And used to deal with ticketing work.

That you alongwith P.K.Barthwal, Sanjay Kaura, Sr. Accounts Asst., Sukhbir Singh Sangwan, Sr. Traffic Asst., D.K.Kharbanda, a travel agent and Brijesh Kumar Gautam, Contractual Book binder with IAL made a plan in the year 1999 to take out the stock of CVDs unauthorisedly from IAL CVDs Store and thereafter make illegal money by getting the ticket cancelled and refunded from the various IAL stations.

That Shri Sanjay Kaura, Sr. Accounts Asst. and Shri D.K.Kharbanda, a travel agent approached you at Safdarjung Booking Office, and requested you to validate 100 stolen tickets bearing Sr. No. 058-2200208701 to 058-2200208800 by putting the impression of Bradma ticket validator of Safdarjung Airport Booking Office. During the night hours passengers rarely visit booking office, accordingly you agree to validate the tickets during night duty after assurance of a share in the refund amount. In the intervening night of 10/11th Oct, 1999, Shri Sanjay Kaura and Shri D.K.Kharbanda reached Safdarjung Booking Office in the mid night when you were on duty. By avoiding the attention of the other IAL staff on duty, you took out unauthorisedly the said bradma ticket validator machine outside booking office and all the hundred tickets were embossed by putting its impression. Thereafter the machine was put back at the same place (from where you had taken it) by you.

That after obtaining refunds on the some of the stolen tickets from various IAL stations outside Delhi, Shri D.K.Kharbanda met Shri P.K.Bhartwal, Sanjay Kaura, Sukhbir Singh Sangwan, Brijesh Kumar Gautam and you at Delhi, where amount obtained through refunds on unauthorized tickets/and re-routed tickets were distributed among you and the above said persons. Further programme to obtain refund was also chalked out.

That you assisted Shri Sanjay Verma, Samar Singh and Brijesh Kumar Gautam, who came to Safdarjung Booking Office for obtaining the refunds on the IAL tickets connected to the lot of the 100 tickets stolen by P.K.Barthwal.

That you also cancelled 6 IAL tickets bearing Serial Numbers 058-2250960195, 058-2250960179, 058-2250960199, 058-2250960200, 058-2250960203 and 058-2250960205, which were given to you for cancellation by Sukhbir Singh Sangwan and connected to the lot of 100 tickets unauthorisedly taken out by Shri P.K.Barthwal.

That from the period June-1999 onwards you have failed to maintain absolute integrity and devotion to duty and therefore you are hereby charged as under:-

That you unauthorisedly took out bradma ticket validating machine in the intervening night of 10/11.10.1999, while on duty at IAL Safdarjung Booking Office and validated/allowed to be validated 100 blank manual IAL tickets bearing serial numbers 058-2200208701 to 058-2200208800, on being approached by Sanjay Kaura, Sr. Accounts Asstt. And Shri D.K.Kharbanda.

That you unauthorisedly prepared refund vouchers, cancelled IAL tickets and helped Shri Sanjay Verma, Shri Samar Singh, friends of Sanjay Kaura and Sukhbir Singh Sangwan respectively in getting refunds on the IAL tickets connected/pertaining to the lot of 100 tickets which were taken out unauthorisedly.

That you, acted in a manner, dangerous and detrimental to the IAL which ultimately contributed and led to the loss of Rs. 6,67,390/- to TAL. Thus you committed gross misconduct.

Your above acts, if proved, would amount to breach of Standing order 1 and misconduct within the meaning of Clause 16(4), 16(16), 16(43) of the Standing orders (Regulations) concerning Discipline & Appeals as applicable to you, which read as under:

<i>Standing Order 1:</i>	<i>Every employee of the company shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests, credit and prestige of the company.</i>
<i>Clause 16(4):</i>	<i>Theft, fraud and dishonesty, in connection with business or property of the company.</i>
<i>Clause 16(16):</i>	<i>Willful damage to any property of the Company.</i>
<i>Clause 16(43):</i>	<i>Abetment of or attempt at abetment of any of the above misconducts.</i>

Evidence which is proposed to consider in support of the charge:

- 1. Evidence of Shri Ramesh Malhotra, Retd. Sr. Manager (Vigilance) and his oral evidence.*
- 2. Evidence of Shri D.R. Singh, Retd. Sr. Manager (Vigilance) and his oral evidence.*
- 3. Evidence of Shri J. Chandrahassan, Sr. Vigilance Asst. and his oral evidence.*
- 4. Evidence of Dr. Sushil Kumar Gupta: DSP, and his oral evidence.*
- 5. Statement dt. 01.09.2000 of Shri Samar Singh and his oral evidences.*
- 6. Statement dt. 24.8.2000 of Shri Sanjay Verma and his oral evidence.*
- 7. Pointing out cum Recovery Memo dated 24.08.2000 in respect of Shri F.G.Runda.*
- 8. Your disclosure statement dated 24.08.2000.*
- 9. Ticket No. 058-2250960195, 197, 199, 200, 203, 205.*
- 10. Any other evidence oral or documentary in support of the charge.*

You are to admit or deny the charges leveled against you specifically.

You are hereby required to put in a written statement of your defence in reply to each of the charges on or before 21/02/2003. You are warned that if no statement is received from you by the undersigned within the time allowed, it will be presumed that you have none to furnish and order will be passed in your case accordingly.

You are further required simultaneously to inform the undersigned in writing whether you desire to be heard in person, and, in case you wish to examine or cross examine any witnesses to submit along with your written statement their names and addresses together with a brief indication of the evidence which each such witness will be expected to give”.

3. The workman/claimant replied the above charge sheet denying charge of misconduct labeled over him. He challenged the enquiry proceeding conducted by the enquiry officer that it was under the dictate and pressure of the management without application of his own mind. They did not permit him, help of a legal practitioner in the proceeding. Extraordinarily the enquiry was delayed which took 13 years from the time of incident of 1999 as the punishment order was issued on 13.07.2013. Even the appeal of the workman against the punishment order was dismissed vide a liconic and sketchy order on 21.08.2013, when the workman raised the industrial dispute in this regard before the Regional Labour Commission (Central) under section 2A of the I.D. Act, 1947, the management did not response to that due to which

conciliation attempt was failed. Having no hope from the management the present application before the tribunal is moved wherein the validity, fairness and legality of the dismissal order dated 13.07.2013 is challenged.

4. The application of workman is contested, filing a written statement by the management, stating that the workman was rightly dismissed from service of the management. A valid and proper domestic enquiry was conducted prior to the dismissal ordering to the delinquent workman in accordance with the principle of natural justice workman was given due opportunity to defend him against the charges with which he was assigned. The written statement has also discribed in detail the responsibility of the post on which the workman/claimant had appointment and his conduct during his employment in conspiracy with some of the office bears and a travel agent which arraigned him which constitute charges of serious misconduct.

5. Vide order dated 28.05.2015 on the basis of pleadings of the contesting parties following two issues were framed:

“1. Whether the domestic/enquiry conducted by the management is not just & fair and is against principles of natural justice?

2. Whether termination of services of the claimant is legal and valid, as alleged?”

6. It is further ordered that issue no1 which pertains to the domestic enquiry will be treated as preliminary issue and claimant to lead evidence on the above issue. Both the parties led their evidence.

7. The claimant submitted his affidavit as the statement if examination in chief and cross examination by the management’s representative, in turn the management produced its witness if evidence Sh.Ashwani Sehgal who submitted his affidavit in examination in chief and was cross examined by claimant’s authorized representative. This would be pertinent to state that tribunal vide it’s order dated 09.02.2018 directed to read and consider the statement of the said management witness ‘Ashwani Sehgal’ recorded in the case of co-delinquent workman F.G.Runda in I.D. No.76/2014. Arguments on the basis of material documents and evidence adduced before the tribunal heard with regard to the said issue No.1 and order passed by the CGIT on 10.08.2018.

8. The tribunal vide its order dated 10.08.2018 held that the domestic enquiry against the claimant was conducted violating the principal of Natural justice to the prejudice of workman in an unfair manner. Consequent upon the above finding the tribunal further held that the order dated 13.07.2013 passed by the disciplinary authority dismissing the services of the workman cannot legally survive. With the above findings the tribunal further opined that the management should be given opportunity to adduce evidence on merit of the charges labeled against the workman in the charge sheet.

9. The management aggrieved from the aforesaid order of the tribunal dated 10.08.2018 impugned the same in writ petition WP(c) 426/2019 Air India Ltd. V. Sanjay Kaura which was heard and decided with the writ petition no. WP(c) 415/2019 filed against the same order of tribunal of the same date passed in the case Id no. 63/2014 F.G. Runda V. Air India Ltd., vide its judgment on 03.07.2019 Hon’ble Delhi High Court made several observations hearing the learned counsel for both the parties.

10. The relevant para’s 4,5 and 6 are carved out from the judgment on 03.07.2019 being reproduced here under with due regard –

“4. Mr. Lalit Bhasin, learned counsel for the petitioner submits that these are clear cases of loss of confidence by the petitioner in the respondents and no inquiry was required to be conducted by the petitioner for the first instance as per the principles laid down by this Court in **State Bank of Travancore v. Prem Singh, 2019 SCC Online Del 8258** in which this Court, held that the employee can be terminated without inquiry in the case of loss of confidence. This Court further held that even if the inquiry was held to be bad, the employee is not entitled to reinstatement but only compensation.

5. Learned counsel for the petitioner submits that both these cases are squarely covered by the principles laid down by this Court in **State Bank of Travancore** (supra) and, therefore, even if the inquiry is held to be vitiated, the respondents are not entitled to reinstatement but only compensation. It is submitted that this submission is without prejudice to the petitioner's case that there has been no violation of principles of the natural justice. It is further submitted that the learned Industrial Tribunal be directed to hear the matter afresh in terms of the principles laid down by this Court in **State Bank of Travancore** (supra).

6. *Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in **State Bank of Travancore** (supra). It is further submitted that the petitioner paid about Rs. 11,00,000/- to the legal representatives of similarly situated charge-sheeted person and the respondents claim parity with respect to the compensation paid to the legal representatives of the situated person."*

11. Hon'ble the Delhi High Court with the above quoted observation in its judgment remanded back the matter to hear and decide afresh with the direction on 3.07.2019 in Para 8 of the judgment dated 03.07.2019.

*"Para- 8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in **State Bank of Travancore** (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions."*

12. The matter was heard afresh by the tribunal in the terms of the direction of the Hon'ble High Court and a detailed discussion is made for reaching at a conclude recorded in order of the tribunal date 16th February 2022. The tribunal disposed of the prayer of the management for an order on the issue of loss of confidence vide order of the same date the relevant is reproduced as under:

"In this case by order dated 10.08.2018 the tribunal has already formed an opinion about the defects in conduct of the domestic inquiry and found the same unacceptable. That means there is no material before this tribunal to adjudge the legality of the punishment inflicted by the management on the claimant workman.

Furthermore, when the management opted to conduct a domestic inquiry and not to proceed under Regulation 13 empowering the management to terminate the job of the employee without any inquiry, at this stage when the domestic inquiry has been found to be unfair and vitiated, it cannot press the provision of Regulation 13 into service. If this stand of the management would be allowed the same would amount to giving the opportunity to the management of switching over from one procedure to another when its earlier action was found defective to the advantage of the workman.

The argument advanced by the management to accept the order of termination for the loss of confidence without asking for further evidence to prove the charge is thus held not acceptable under law and the same is rejected.

Since it is an extremely old matter pending since 2014 and the service of the workman was allegedly terminated in 2013 it is felt proper to take up the matter on an early date without further delay. The management is thus called upon to adduce evidence to prove the charge against the claimant positively on 14th march 2022. It is made clear that no adjournment shall be allowed to the management for adducing evidence beyond that date."

13. Aggrieved from the above said order of the Tribunal dated 16th February 2022, the management again approached the Hon'ble High Court with WP (C) No.893/2022 and WP(C) No.8148/2022 for quashing set-aside the impugned orders. The grievances raised before the court that the tribunal over looked the direction of the Hon'ble High Court of Delhi in its judgment and passed the impugned order without the Hon'ble High Court of Delhi stayed the impugned order dated 16.02.2022.

14. After hearing the consenting parties in the matter, the Hon'ble High Court of Delhi in para '5' of it's judgment dated 24.08.2022 in WP(C) No.8948/2022 and WP(C) No.8931/2022 made following observations:

"5. It is an accepted position that this order has not been challenged by either of the parties. The implications of the order dated 03.07.2019 as contained in para 8 in W.P.(C) Nos. 426/2019 and 475/2019 are as under:

- (i) *The learned tribunal should have examined the matter afresh in term of the principles laid down by this court in **State Bank of Travancore** (supra). Thus, if the termination of the employees was found to be on the basis of loss of confidence of the management, in accordance with the principles laid down in **State Bank of Travancore** (supra), the claim of the claimants would be confined to only compensation and;*
- (ii) *If the learned tribunal finds that the removal of the workmen was not on the loss of confidence and was not on the basis of the principles laid down in **State Bank of Travancore** (supra) then the tribunal would be proceeded with the recording of the evidence of the petitioner management for proving the charges against the claimants/workmen."*

15. Further in Para 7 of the judgment dated 24.8.2022 it is observed that:

“7. *However, it seems that the learned trial court has not gone in accordance with the directions of this court as contained in the order dated 03.07.2019 and therefore, the impugned order is liable to be set aside and is set aside*”.

16. Following direction given to the Tribunal by the High Court which are content in Para 8 of the judgment on 24.8.2022.

“8. *In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in State Bank of Travancore (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions.*”

17. The order of the Hon'ble High Court dated 24.08.2022 was received to this Tribunal on 1st of September 2022 parties to this industrial dispute through their authorized representative appeared before the tribunal and agreed to submit their arguments on 22.09.2022.

FACTUAL MATRIX

18. As comes out from the pleading of the parties and the charge sheet issued for domestic enquiry of the present claimant/workmen with other co-delinquents the incident of taking out unauthorisedly the bundle of 100 tickets misusing his official position by the co-delinquent and the other employees and outsiders involved with him in the conspiracy was taken cognizance by the Central Bureau of Investigation. A criminal case was lodged by it in the competent court. It is admitted that as the claimant in his statement of claim while assailing the charge sheet issued to him for the proposed domestic enquiry has pleaded that the charges levelled against him were identical with charges levelled by the CBI in criminal court vide FIR dated 24.05.2000. Further in the rejoinder to the written statement by the management the claimant has cited the statement of Dr. Sushil Gupta (MW30) who investigated the case on behalf of CBI in the capacity of Deputy SP, who deposed that, ‘basically the case pertained to 100 tickets which were stolen from the lot of 50 thousand tickets and the same were misutilised. In the course of the investigation it was found that all four charge sheeted employees namely Mr. P.K.Barthwal, Mr. Sanjay Kaura, Mr. F.G.Runda and Mr. Sukhbir Singh in conspiracy with each other alongwith two private persons Mr. D.K.Kharbanda and Mr. Brijesh Kumar had been instrumental in committing theft.

19. This court passed its judgement and award by which vitiated the enquiry on the ground that the enquiry officer conducted the enquiry in violation of principle of natural justice, to the prejudice of the workman, as well as in an unfair manner, resultantly the order dated 13.07.2012 passed by the disciplinary authority cannot legally survive and sustain as held unfair and against the principles of natural justice. The tribunal further opined, an opportunity be granted to the management to adduce evidence on merit on charges as mentioned in the charge sheet. It clearly means that the enquiry was assailed on the technical grounds emerging from the step wise requirement which were found by the tribunal irregularly or unsatisfactorily complied with, like non production of all the witnesses during the enquiry, non-supply of all the document relevant to the enquiry.

EVIDENCE

20. On completion of pleadings for and on behalf of the respective parties to the industrial dispute, the tribunal preferred to frame the issues. The tribunal required the parties to file their documentary evidences exchanging copies thereof to each other. On 15/04/2015 as the order sheet of the case reveals one Ranjan Jha, appeared for the management and filed, the copy of the enquiry proceedings alongwith documents taken into consideration in the enquiry which were taken on record. The copy of those were receive don behalf of the claimant on the same day by his AR Sh.Vijay Kumar. Singh the documents were voluminous, the parties were given further time to endorse thereon their admission or denial on 03, July 2015 and again on 06/08/2015. On 28/09/2015, the date fixed for framing issues, though the managements AR endorsed denial/admission of the documents filed by the claimant, but the AR for the claimant did not admit or deny any of the document of the management. After framing of the issue the claimant, himself offered his testimony by filing an affidavit of examination in chief. In its turn the management produced its officer in evidence, Sh.Ashwani Seghal, whose affidavit of examination in chief is on record, and was cross examined.

21. The management having been called upon had produced documentary evidence in the form of enquiry proceeding and the documents referred there in on affidavit providing, a copy thereof to the claimant. The parties were further called upon to admit or deny specifically each other's document, so produced before the tribunal. The management endorsed it's specific admission/denials on the documents produced in evidence by the claimant but claimant though throughout represented and present in the proceedings before the tribunal, despite opportunity given to him, did not endorsed his admission or denial on the management's documents produced in evidence. He ignored and neglected to admit or deny specifically. It is established principle of law as to the “admissions” that every document which was called upon to admit, if not denied specifically or by necessary implication or not stated to be admitted by the party in their pleading, shall be deemed to be admitted. Hence in the present case, the enquiry proceeding and the documents referred therein shall be deemed to have been admitted and therefore shall be taken

into consideration of the nature and of the charges levelled against the claimant.

22. When the tribunal allowed the management to produce evidence of charges in the domestic enquiry against the claimant and the management produced the document in support of the charges which had not been denied by the claimant, the same shall be treated as admitted, un rebutted piece of evidence and the tribunal may record its finding while adjudicating the industrial dispute it pertaining to dismissal of the workman (claimant of the present case) in consonance with the relevant pleadings of the parties in that regard.

23. The position of workman holding an office of trust and confidence by virtue of his appointment by the management. This is admitted fact that the claimant whenever was appointed in the year 1990 by the management and was working as Senior Accounts Assistant in Financial Department at Indira Gandhi International Airport, New Delhi. When he was dismissed from service with effect from 13/07/2012. This holding the office of trust from by the claimant workman in the establishment management in admitted when need no further evidence.

24. This would further be relevant to state that the aforesaid first information report lodged by the CBI and the criminal proceeding running in criminal court were never challenged in any court of law. Alleging them false and fabricated against them. The statement of aforesaid management witness Dr. Sushil Gupta (MW30) is available in the record of enquiry proceeding and presented before this court also which prima-facie show and establish the fact of involvement of present claimant/workman. Acting misusing his official position of holding an office of trust when involved himself in theft, misappropriation and breach of trust to make wrongful gain for himself. Admittedly the domestic enquiry instituted subsequent to the lodging of the First Information Report by the CBI. This undoubtedly was sufficient to make reasonable apprehension in the minds of the authorities of the management in regard to the trust worthiness of the present claimant/workman. As such the fact continuing the loss of confidence of the employers (management) is pleaded and established by the management.

25. The management witness was produced before the tribunal on 30.03.2022 has stated on oath in the cross examination that he is aware of the misconduct committed by the claimant who has misused his official capacity, stolen and misused appropriated ticket of Air India unauthorisedly. Document in this aspect have already been placed on record and exhibited as MW1/2 to MW1/4. He further says that it would be incorrect to suggest that these documents are no way relevant for the alleged misconduct against the claimant (workman). It is also wrong to suggest that having not been posted in the booking office the witness has no knowledge about the alleged incident and deposing falsely.

26. The documents above referred produced and proved by the management in support of their charges shall stand admitted by reason of their non denial. The original document relating to the culpable act of the claimant/workman in the incident are also with the knowledge of claimant/workman taken by the CBI in their custody and reserved for submission before the criminal court in criminal case pending there with regard to the incident. The CBI investigator in his statement had also stated the said fact before the tribunal as witness MW30 Dr. Sushil Gupta.

Argument

27. Learned AR for the claimant/workman argued in the context of order of remand passed by the Hon'ble High Court of Delhi dated 03.07.2019 that on 19.10.2022 in Writ Petitions No. 8931/2022 & 8948/2022. It is submitted that these writ petitions were filed by the management assailing the order dated 16.02.2022 of the CGIT in which the management had suppressed the vital fact that it had already complied with the direction in the said order and produced Mr. Tarun Mathur on 30.03.2022 before this tribunal. The deposition of Mr. Tarun Mathur is available on the records of the case before the tribunal. The management therefore is guilty of concealment, as such, being uncleaned is liable to be thrown out for this reason alone. The learned AR further argued that previously the management conducted enquiry against the claimant/workman which is dragged by him for considerable period of 19 years. However, when they found that it was not possible to prove the misconduct against the claimant/workman, they suddenly changed their goal post and adopted a totally new plea of loss of confidence on 03.07.2019 for the first time in the Hon'ble High Court. The said plea of loss confidence was, therefore, neither bona fide nor legally permissible. Learned A.R. vehemently argued that in view of the case law propounded by the Apex Court in the case of **Kanhaiya Lal Agarwal V. Factory Manager, Gwalior, Sugar Factory (2001) 9 SCC 609**. The management had not fulfilled the essential norms set by the court that it is not pleaded and proved by the management that the workman was holding the post of trust and confidence 'and by abusing such position, committed such act which resulted serious misconduct and also that to continue him in service would be inconvenient to the employer or would be detrimental to the discipline and security of the establishment. He further impressed on the well settled law that what is not pleaded can not be proved and that a totally new plea is not permissible in law. Further it is argued that Hon'ble Supreme Court in the case of **Prabhakar V. Sericulture Department (2015) 15 SCC 1** that right not exercised for a long time shall be treated on non-existent.

28. Learned AR further argued that the burden of proof of the charges is on the employer as it is explained by the Apex Court in the case of **Delhi Cloth Mills V. General Wheel Company**. Management remained unsuccessful in discharging his burden the next argument of the learned AR is to give benefit of the parity as in the same matter the management itself granted the other charge- sheeted employees. The Sukhbir Singh Sangwan's legal representative

who expired in December 2009 by paying the compensation. The present workman/claimant is denied. The doctrine of equity applies to all those who are equally placed, even persons who are found guilty. In his support learned AR referred the judgment of Apex Court in case of *Rajender Yadav V. State of M.P.* 2013 (137) FLR 239.

29. Learned AR further impressed on that the AR for the management stated that the workman/claimant is not entitled to reinstatement but only compensation, which is also somersault as they have stated before the tribunal while submitting their written argument that the workman is not entitled for either reinstatement or entitled for back wages or any compensation. In this connection the learned AR further argued that the persistent efforts of the management has been to delay the proceeding in the present industrial dispute also violative of the right to life of the workman as mandated in the Article 21 of the constitution of India.

30. The learned AR impressed on that vis-a-vis the domestic enquiry in the matter the CBI has also prosecuted of the workman for serious offenses and no charge have been framed in the said case even after 22 years.

31. Learned AR has relied on case laws propounded by the courts which are 2013 (137 FLR 239 Supreme Court) in *Rajender Yadav V. State of M.P. and Kanhaiya Lal (Supra)*.

32. On the other hand written submission of argument by the management is submitted. The learned AR for the management argued that the workman was senior traffic assistant at booking office and used to do the ticketing work. He alongwith Sh. D.K. Kharbanda, Travel Agent, Sh. Brijesh Kumar Gautam contractual book binder, take out of bundle of tickets, valued documents (CVDs) unauthorisedly from the store and make illegal money by getting the tickets cancelled and refunded from management's various airline stations. Thereafter an FIR was launched by CBI against the workman and other persons in conspiracy with him. The act of the workman is under the category of grievous misconduct. He emphatically argued that in view of the aforesaid misconduct the workman was suspended and charge sheeted, his reply was sought after getting relevant documents from the management. Further enquiry was conducted in accordance with principle of natural justice in practicality and fare play and in accordance with applicable standing orders of the management. The tribunal vitiated the aforesaid enquiry vide order dated 10.08.2018 and directed the management to lead evidence on the issue of misconduct. In the writ petition filed against the order the Hon'ble High Court disposed of petition vide order dated 03.07.2019 and referred back the matter before this tribunal hear the argument on the issue of loss of confidence in view of the principle laid down in the case of *State Bank of Travankor V. Prem Singh* dated 10.04.2019 by Delhi High Court (Supra).

33. Learned AR for the management further argued that sufficient evidence on record which are prima facie evidences against the workman which establish dishonesty and misconduct on the part of workman therefore management had rightly terminated his services on the ground of loss of confidence. Learned AR submitted that they were in reasonable and strong apprehension of misappropriation, theft and fraud and breach of trust on the part of employee causing financial loss to the company, therefore his dismissal/termination is immune from challenge and accordingly neither reinstatement may be ordered nor any compensation is payable. In the present case the 100 tickets of the Airline were stolen and that financial loss of tune approximately Rs. 7 Lakh has been caused to the airline is admitted position. Also it is the case of the workman that CBI has filed a criminal case before the competent court on the same charges which is pending. During the course of investigation by CBI certain statement of CBI officers were recorded. Learned AR in the light of such admissions emphatically submitted that above factual position is sufficient to create reasonable doubt and apprehension regarding integrity of the employee, who was holding position of trust with the management. Lastly, the learned AR submitted that in Para of the judgment of Hon'ble High Court recorded the submission of the lead case of 2019 learned AR for the counsel for the workman that the claim of the workman would be confined to compensation only before the CGIT.

34. Reliance placed on the case laws propounded by the various courts including Apex Court which are as follows:

1. **All India Institute of Medical Scientist V. O.P. Chauhan Manu/DE/0321/2007.**
2. **Bharat Heavy V. Chandra Shekhar Air 2005 Supreme Court 2769.**
3. **Air India V. Revallo Air 1972 Supreme Court 1342**
4. **T.N.T.S. Corporation Ltd. & Oth. V. K.Meera Bai 2006 (2) S16255.**
5. **Sidhu Vishmu Banvalkar V. Bank of India.**

DISCUSSIONS

35. Heard the learned authorized representative of the parties to the present industrial dispute at a considerable length and gone through their detailed and descriptive written arguments in the light of their pleadings and evidences responding there to. At the very outset the learned AR for the management Sh. Lalit Bhasin Adv. urged that presently the court is to confine the hearing and decide the matter in terms and context of the remand order passed by the Hon'ble High Court on 03.07.2019 in W.P.(C) No.426/2019 and W.P.(C) 475/2019. He impressed on the undertaking of learned AR for the claimant/workman (Respondent in the aforesaid Writ Petitions) to restrict his claim

before the CGIT to compensation only in view of the principle laid down in *State Bank of Travancore (Supra)*. The said submission of learned AR for the claimant/workman is recorded by the Hon'ble High Court in Para 6 of the order, read by the learned AR for the management is being reproduced herein below:

"6. *Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in State Bank of Travancore (supra). It is further submitted that the petitioner paid about Rs.11,00,000/- to the legal representatives of similarly situated charge-sheet person and the respondents claim parity with respect to the compensation paid to the legal representatives of the similarly situated person.*"

36. Learned AR for the claimant/workman opposed the contention made by the management and submitted emphatically that matter before the tribunal is remanded to here and decide afresh and no such undertaking as recorded in the order dated 03.07.2019 is given ever on behalf of the claimant. However, no correction or modification of the order in this regard is sought from and ordered by the Hon'ble High Court at the behest of the workman. The order of remand by the Hon'ble High Court is explicitly made by the Hon'ble High Court in order dated 03.07.2019. Para 8 of the order runs as under:

"8. *In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in State Bank of Travancore (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions.*"

37. For the reasons stated above this court shall proceed to decide the matter afresh in terms of the order of the Hon'ble High Court dated 03.07.2019 and on the basis of principle laid down in the case of *State Bank of Travancore (Supra)*. With a view to examine the case before this tribunal of reinstatement of the claimant/workman Mr. Sanjay Kaura in service of the management with back wages and other consequential benefits, the tribunal has to evaluate whether termination of the workman is done on the basis of loss of confidence of the management. Further when it is found that the service of the workman is terminated by reason of loss of confidence the claim of the workman to compensation. In the direction issued by the Hon'ble High Court the tribunal is given liberty, in case the termination is not found on the basis of loss of confidence and in accordant with the principle laid down in the case of *State Bank of Travancore (Supra)*, to proceed for recording of the evidence of the management. For the aforesaid purpose it would be pertinent to reproduce under the principle laid down by the Hon'ble High Court in the case of *State Bank of Travancore (Supra)* which are as follows:

"31. *When an employee acts in a manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation can be awarded.*

32. *The plea of 'loss of confidence' by the employer has to be bona fide. Loss of confidence cannot be subjective. It has to rest on some objective facts, which would induce a reasonable apprehension in the mind of the management regarding the trustworthiness of the employee and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. Otherwise, a valuable right of reinstatement to which an employee is ordinarily entitled to, on a finding that he is not guilty of any misconduct, will be irretrievably lost to the employee.*

33. *The bona fide opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, is final and not subject to review by the industrial adjudication.*

34. *In case of misconduct resulting in loss of confidence, the employer is not bound to hold any inquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee. The employer, in its discretion, may invoke the power to discharge simpliciter for loss of confidence while dispensing with inquiry into the conduct of the workman. The departmental inquiry in such a case is not necessary.*

35. *The reinstatement of an employee terminated for loss of confidence cannot be ordered even if the inquiry held by the employer has been held to be bad.*

36. *The reinstatement of an employee terminated for loss of confidence for involvement in a criminal case cannot be directed even if the employee is able to secure a acquittal or discharge in the criminal case.*

37. *The reinstatement has not been considered desirable in cases where there have been strained relationship between employer and employee. The reinstatement is also denied when an employee has been found to be guilty of subversive or prejudicial activities. The Courts have also denied reinstatement in cases where long time has lapsed or where the industry itself has become sick."*

38. In view of the aforesaid above narration of the context and pleading in the present matter, I proceed further as follows:

Loss of Confidence**When the court or industrial adjudicator may go behind the order of punishment of dismissal to interfere.**

In Murugan Mills case (1965) 2 S.C.R. 149 the Apex Court has observed, 'The right of the employer to terminate the services of his workman under the standing order, which amount to a claim to hire and fire the employee as the employer pleases and those completely negative security of service which had been secured to industrial employees. When the matter came before the Supreme Court in the case of management of **U.B.Dutt & Co. V. Workmen of U.B.Dutt & Co. 1962 Supplement. 2 S.C.R 822**, when the view taken by the labour appellate tribunal was approved and it was held that even in a case like the present the requirement of bona fide was essential and if the termination of service was a colourable exercise of the power or as a result of victimisation or unfair labour practice, the industrial tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the tribunal can go behind the order to find the reason which led to the order and then consider for itself whether the termination was a colourable exercise of unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice, it would have the jurisdiction to interfere and set aside such termination.

What does 'Loss of Confidence' mean in termination of the service of the workman?

It means a break down in trust and confidence often cited as reason for dismissal termination linked or the finding of misconduct. For example that in the light of misconduct an employer has lost confidence in the employee to such an extent that, it is not possible that he can be retained in service any more.

39. In the present case the workman admittedly was appointed as Senior Traffic Assistant on 1990 in Booking Office, Safdarjung Airport, New Delhi. Admittedly the workman (Mr. F.G.Runda) was holding an office of trust being Senior Traffic Assistant. In such capacity and official position in the year 1999, he alongwith his colleague Mr. Sanjay Kaura, (Senior Account Assistant), Mr. D.K.Kharbanda, (Travel Agent), Mr. Brijesh Kumar Gautam, (Contractual Book Binder) of the management made a plan to take out stock of cash valued document (CVDs) unauthorisedly from the CVD store of airline. The present workman referred herein above is said to receive a bundle of 100 blank manual double sector tickets which was taken out unauthorisedly by the co-employee Mr. P.K.Barthwal, Senior Account Assistant during the week of September 1999 from DVD Store Palam by dogging the other staffs on duty. The present workman alongwith Mr. D.K.Barthwal, Mr. D.K.Khardanda, approached Mr. F.G.Runda posted as booking office and requested him to validate aforesaid 100 stolen tickets by putting the impression of Bradma ticket validator of Safadarjung, Airport Booking office. Further in the intervening night of 10/11 October, 1999 the present workman and Mr. D.K.Kharbanda reached Safdarjung Office in the mid night when Mr. F.G.Runda was on duty. By avoiding the attention of the other Airline Staff on duty Mr. F.G.Runda took out unauthorisedly the Bradma ticket validator machine outside the booking office and all the 100 tickets were embossed by putting its impression. Thereafter claimant/workman unauthorisedly kept the said tickets to obtain refund from various Indian Airline offices, visited booking offices at Mumbai, Pune and Goa etc. with Mr. Sukhbir Singh Sangwan and Mr. D.K. Kharbanda and obtained refund unauthorisedly. Finding prima-facie the involvement of the present workman and other co-accused and co-delinquent employees (his colleagues) in the plan and conspiracy which being a serious act of misconduct he was suspended vide order dated 07.12.2000 and thereafter was issued a charge sheet vide memo dated 11.02.2000. A domestic enquiry was launched against him. The charge sheet is reproduced in the opening portion of this judgment. An interim reply dated 24.09.2003 was submitted by the workman with prayer to provide copy of the relevant document. He was provided the requisite documents then he submitted his reply on 04.08.2003. The reply was not found satisfactory therefore the competent authority of the management decided to hold an enquiry into the charges labelled against the workman. The enquiry was conducted jointly alongwith the other co-delinquent employees named above in the enquiry officer after taking on record evidences adduced before him concluded and submitted his report with finding that the workman is guilty of the charges labelled against him. Workman submitted his submission before the competent authority who considered the same and found no merit in his claim. Concurring with the finding of the enquiry officer a show cause notice was issued to the workman proposing imposing the punishment of dismissal from service of the company without terminal benefits. The workman replied the same also after the consideration of the reply the competent officer confirmed the punishment. Appeal when preferred by the workman against the punishment order against the order dated 13.07.2012 of the competent officer the same will be rejected. It is argued by the learned AR for the management that it is clear from the aforesaid sequence of the facts that the workman was dismissed from the services of the management company after conducting a valid and proper domestic enquiry in accordance with the principle of natural justice, equity, fair play and in accordance with the provisions of applicable standing order.

40. This would be relevant here to point out that above incident of taking out the bundle of 100 tickets, misusing his official position by the present claimant/workman and the other employee's and outsider's involvement with him in the conspiracy was taken cognizance by the Central Bureau of Investigation. A criminal case was lodged by it in the competent court. The claimant in his statement of claim while assailing the charge sheet issued to him in the domestic enquiry has pleaded that the charges labelled against him were identical with charges labelled by the CBI in criminal court vide FIR dated 24.05.2000. Further in the rejoinder to the written statement by the management the

claimant has cited the statement of Dr. Sushil Gupta (MW30) who investigated the case on behalf of CBI in the capacity of Deputy SP, who deposed that, 'basically the case pertained to 100 tickets which were stolen from the log of 50 thousand tickets and the same were misutilised. In the course of the investigation it was found that all four charge sheeted employees namely Mr. P.K.Barthwal, Mr. Sanjay Kaura, Mr. F.G.Runda and Mr. Sukhbir Singh in conspiracy with each other alongwith two private persons Mr. D.K.Kharbanda and Mr. Brijesh Kumar had been instrumental in committing theft.

41. This would further be relevant to state that the aforesaid first information report lodged by the CBI and the criminal proceeding running in criminal court were never challenged in any court of law. Alleging them false and fabricated against them. The statement of aforesaid management witness Dr. Sushil Gupta (MW30) is available in the record of enquiry proceeding and presented before this court also which form strong prima-facie evidence of to establish the fact of involvement of present claimant/workman of acting and misusing his official position while holding an office of trust. It is also prima-facie established that he involved himself in theft, misappropriation and breach of trust to make wrongful gain for himself. Admittedly the domestic enquiry proceeding was launched subsequent to the lodging of First Information Report by the CBI. This undoubtedly was sufficient to make reasonable apprehension in the binds of authorities of the management in regard to the trust worthiness of the present claimant/workman. As such the fact constituting the loss of confidence in the employer's (management) mind is pleaded and established by the management.

42. The aforesaid matter of criminal misconduct was subjected to domestic enquiry and ultimately the service of workman/claimant was terminated in punishment with no terminal benefits. This tribunal has vitiated the enquiry technically on the basis of non-observing the principles of natural justice and fair play, thereafter called upon the management to prove the charge of misconduct. The management in compliance of the order of the tribunal produced Mr. Tarun Mathur on 20.03.2022 to establish and prove the misconduct. Learned AR for the workman submitted that the management in its writ petition no. 8931/2022 and writ petition no. 8948/2022 before the Delhi High Court to impugn the order dated 16.02.2022 passed by the CGIT suppressed the vital fact that it has already complied with the direction of the tribunal to produce witness so as to prove misconduct. The management pleaded the ground why the further evidence as to misconduct of the workman/claimant is impossible to adduce because several witnesses examined during the enquiry might have superannuated from service or some of them might had died or settled outside Delhi. Further in criminal proceeding filed by the CBI which is still pending in Rohini District Court Delhi, most of the original of the documents relied upon by the management have been taken by the CBI for the purpose of criminal trial and therefore are not available with the management to prove the misconduct before the tribunal afresh. Accordingly, it would not be passable for the petitioner to prove the misconduct afresh against the workman/claimant after such a long time as most of the witness and document relied upon may not be available.

43. Learned AR for the workman/claimant argued that the plea of loss of confidence was taken for the first time in the Hon'ble High Court by the management on 03.07.2019 was therefore neither bona fide not legally permissible at all.

44. Sometime in case a employer is not able to prove a charge of misconduct against the workman, either because clear evidence is not available against him, or because the charges cannot be establish due to the sensitivities involve in the matter (for example cases involving sexual harassment). Such cases often involve situation where an employer is said to have lost the confidence in the worker, i.e. the employer no longer had the confidence to retain worker in employment. Learned A.R. for the workman/claimant in support of his argument with regard to the plea of loss of confidence which taken by the management, is not bonafide, has relied on the case of **Kanhiya Lal Agarwal V. Factory Manager (Supra) (2001 (9) SCC 609)** in Para 12 the Apex Court led on conditions to be satisfied for concluding that the employer has validity lost confidence in the emerged viz.

1. Whether the worker is holding a post of trust and confidence
2. Whether by abusing such position the worker commit acts which result in forfeiting the same.
3. Whether to continue the worker in service would be embarrassing and inconvenient to the employer or it would be detrimental to the discipline or security of the establishment ?

The above stated all the issue aspects must be present to refuse reinstatement on the ground of loss of confidence. The fact of loss of confidence cannot be established based on the subjective opinion of the management. The important is that, the management should be in a position to prove objective fact that led to a different inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee.

45. In the preceding paras it is discussed that in the pleadings of the claimant the fact of his holding an office of trust and confidence is admitted this need not to be by evidence proved the by virtue of his bearing the office as Senior Accounts Officer in commercial division of the management establishment has being lawful custody and possession of the air tickets, is also admittedly proved from the nature of his official position he held. The second condition that the worker by abusing such position committed an act of taking out the air ticket unauthorisedly also to admission with regard to the CBI enquiry and investigation deemed to be nor denied specifically and shall amount in charges of theft of air tickets unauthorisedly validating them with the other colleagues and getting them cancelled for

refund and making thereby wrongful gain for themselves with some other outsider like Traveling Agent, etc. The FIR, investigation and police report with charges labelled can this regard had not been challenged in any court of law. Thus, it is sufficient to prima-facie establish that workman committed an act in detriment to the establishment of this employment. A reasonable apprehension emerged in the minds of management authorities that their act would be detrimental to the discipline and security of the establishment also. Thus, the case law cited by the claimant/workman namely **Kanhaiya Lal Agarwal (Supra)** does not help him in any manner.

'Disciplinary Enquiry' necessity, effect of it's being vitiated.

46. The established legal principle is that the institution of a disciplinary enquiry against the workman though, may help the employer in establishing their bonafide before a court of law and assist them in proving the charges relating the loss of confidence made against the workman, however, there have also been cases where no disciplinary enquiry was carried out, yet the employer had been permitted to present fact before the court of law to help them prove that their decision to terminate the workman for loss of confidence was just and valid.

47. In the present case the management had instituted an enquiry in respect of the incident, to enquiry the Charges labelled against the workman alongwith some other colleagues and outsiders who committed the incident in the intervening night of 10/11 October 1999. The management with all bonafide tried to make a preliminary enquiry. Concurrently the CBI had also made investigation and labelled charges with regard to the theft, fraud, dishonesty and willful damage to the property of the management. The workman alongwith other colleagues was also issued charge sheet and when reply was not found satisfactory taken decision to hold enquiry into the charges. The delinquent employees were subjected to joint domestic enquiry therefore it ran from 22.08.2003 till 14.06.2006 and delay was caused by reason of the transfer of enquiry officers also. On resumption of charge by the new enquiry officer the proceeding moved ahead from 16.05.2007 and final submission of the report of the enquiry officer was forwarded to the workman and other delinquent employees in November 2008. Ultimately the enquiry officer found the workman guilty vide his report dated 14.09.2010. The delinquent workman moved representation which is considered by the competent authority who dismissed the same on 12.10.2010.

48. This court earlier had answered the issue No.1 and vide its award has vitiated the enquiry on the ground that the enquiry officer conducted the enquiry in violation of principle of natural justice, to the prejudice of the workman, as well in an unfair manner. Resultantly the termination order dated 13.07.2012 passed by the disciplinary authority cannot legally survive and sustain therefore held unfair and against the principal of natural justice. The tribunal further opined, an opportunity be granted to the management to adduce evidence on merit to charges as mentioned in the charge sheet. It clearly means that the enquiry was vitiated on the technical grounds.

49. The management witness produced before the tribunal on 30.03.2022 has stated on oath in his cross examination, "he is aware of the misconduct committed by the claimant who has misuse his official capacity and stolen air tickets of Air India unauthorisedly. Document in this aspect has already been placed on record and exhibited as MW1/2 to MW1/4. He further stated that it would be incorrect to suggest that these documents are no way relevant for the alleged misconduct against the claimant (workman). It is also wrong to suggest that having not been posted in the booking office he has no knowledge about the alleged incident and is deposing falsely". In fact, in preceding portion of this judgement, I had already discussed about the papers neither admitted nor denied by the claimant/workman when they were produced before the tribunal for recording admission or denial with regard to their genuineness. The claimant/workman or his authorised representative had not made such endorsement which might be willful and with ulterior motives. Therefore, the document produced by the management in support of their charges shall stand admitted by reason of their non denial. The original document relating to the culpable act of the claimant/workman in the incident are also with the knowledge of claimant/workman taken by the CBI in their custody and suggestion for submission before the criminal court in criminal case pending there with regard to the incident. The CBI's investigating officer in his statement had also stated the said fact as witness MW30 Dr. Sushil Gupta.

50. In **K.L.Tirapathi V. State Bank of India and others. (1984 (1) SCC 43)** on Para 29,33,34 this Hon'ble Court has held: -

"29. We are of the opinion that Mr. Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr. Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance

with the principles of natural justice as far as these were applicable to a particular situation. ***So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries.*** Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in "On Justice" by J. R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase "audi alteram partem" which was first formulated by St. Augustine (De Duabus Animabus, XIV, 22, J. P. Migne, PL. 42, 110).

33. ***The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.***

34. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the informations given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity or personal hearing. His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty. Indeed it may be mentioned that he was really consulted at every stage of preliminary investigation upon which the charges were based and upon which proposed action against him has been taken. In that view of the matter, we are of the opinion, that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because the evidence was not recorded in his presence or that the materials, the gist of which was communicated to him, were not gathered in his presence. As we have set out hereinbefore, indeed he had accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness of the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given explanation namely, he was over-worked, he had consulted his superiors and sought their guidance, his conduct has not actually, according to him caused any financial risk or damage to the Bank concerned. Therefore, in our opinion, in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation of the principles of natural justice. Had he, however, denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore."

Standard of proof

51. In the departmental enquiry, the standard of proof required in a departmental order enquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court in the cases **Union Of India V/s Sardar Bahadur (1972 SLR SC 355); State of Andhra Pradesh V/s Shree Rama Rao (AIR 1963 SC 1723) and Nand Kishore Prasad V/s State of Bihar (1978 (2) SLR SC 46)**, has held:

"A disciplinarily proceeding is not a criminal trial and that standard of proof required in a disciplinarily enquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial".

52. The established and settled position of law is that the mode, extent and standard of proving the charge in domestic enquiry is quite different than that in the criminal proceeding. In the domestic enquiry the mode, extent and standard of proving the charge is only to show and established them by means of prima facie evidences, admission and absence of denial of particular fact. Whereas in criminal proceeding the prosecutor is heavily burdened to prove the charges by its own evidences beyond all reasonable doubts. In the present case there are sufficient prima facie evidences of the happening of incident of air tickets having been stolen misutilised for wrongful gain by the accused person. In the criminal case lodged by the CBI in criminal court their complicity is also investigated in the offence

therefore they were labelled with charges under relevant sections of IPC. One of those accused is the present workman/claimant (Mr. Sanjay Kaura) whose claim is under consideration before this tribunal. There is no possibility to exhibit the original documents relating to offence as well to prove the misconduct with the help of them beyond all reasonable doubts in the domestic enquiry. Moreover, the prima facie evidences relating to offence unrebutedly create an inference of culpability as well as complicity of the workman/claimant from whose custody and possession the tickets were taken out from the office of the management establishment. The incident is not denied, the criminal case lodged by CBI in the court is also not denied. The complicity and involvement in that criminal case is also not challenged in any court of law to quash the same by the workman/claimant. It is also not denied that the workman/claimant Mr. Sanjay Kaura alongwith co-accused in the criminal case are labelled with relevant charges in the criminal court. As such non-compliance if any of the principle of natural justice are not shown by the claimant of nature that must cause some real prejudice to the delinquent workman. In absence of any denial as to the facts, above allegations having been not disputed by the delinquent workman shall be presumed to have happened, which may be treated sufficient to raise apprehension, suspicion as to the doubtful integrity and with regard to the character and honesty of the workman/claimant in the mind of management authorities. Moreover, the enquiry proceeding, though may have been conducted not at standard parameter of the principle of natural justice shall not be termed to be malafied or aimed to victimise the workman/claimant by termination of service. In loss of confidence is proved the defective enquiry or no enquiry at all may be an impediment for an employer is terminating the service of the delinquent employee.

53. The admissions of fact with regard to the complicity of the present workman in the conspiracy also reflects in the words of the workman in his appeal make to the Executive Director, Air India, Northern Region, IGI Airport, New Delhi, which is proved and exhibited before the tribunal as paper no. MW1/27 the workman admits that the estimated loss to the management which was approximately of Rs.7 lacs in which the share of the present workman as assessed by him to the tune of Rs.1.5 lacs was deposited by him on 11 Dec, 2000 in IC Office the relevant portion from his appeal his being reproduced hereunder :

"The time I was in jail tried desperately for my bail but failed. It was at the juncture that this DSP informed her that since the estimated loss to IC was approximately Rs. 7 lacs, she would have to deposit Rs. 1.5 lacs in IC office as my portion and only then will they allow my bail in the court. Helpless that we were, we had no option but to deposit the money vide RF-7 receipt on 11 Dec. 2000 in IC office after borrowing the amount from friends and relatives"

As such at least the fact of complicity is establish by evidences and admission in preponderance of probability, which was sufficient to raise a reasonable apprehension has to the trustworthiness and dishonesty of the workman in the minds of management.

55. In Air India Corporation, **Bombay V. Rebellow Air 1972 Supreme Court SC 1343**. The employer terminated an employee with immediate effect. When the matter brought before the Supreme Court, the employer submitted that it has lost confidence in the employee due to a great suspicion regarding the complainant's private conduct and behaviour with an Air Hostesses employed by the employer. It is pertinent to note that the employer had not carried out any disciplinary enquiry against the employee in question. The Supreme Court held them-

"Once bona-fide loss of confidence is formed, the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, its bona-fide is in over opinion final and not subject to review by the industrial adjudicator. Such opinion may legitimately in view the employer to terminate the employee's services; but such termination on more rational ground be considered to be misconduct and must therefore they held to be permissible and immune from challenge."

56. The management in compliance of the order of the Tribunal dated 16.02.2022 produced it's witness before the Tribunal namely Mr. Tarun Mathur (MW1) on 30.03.2022 who stated that in the year 1999 the claimant/workman was approached by Mr. F.G.Runda (Senior Account Assistant), Mr. D.K. Kharbanda (Travel Agent), Brijesh Kumar Gautam (Contractual Book Binder) at Safdarjung booking office and requested by them to validate 100 stolen tickets by putting the impression of Bradma ticket validator of Safdarjung booking office. Mr. F.G.Runda for assurance of monetary gain unauthorisedly took out the said Bradma ticket validator alongwith aforesaid persons during the intervening night of 10/11 October, 1999 from the Safdarjung booking office of the management Air Line. The further stated that Mr. Sanjay Kaura (the present workman), Mr.Sukhbir Singh Sangwan, Mr. Brijesh Kumar Gautam acted to get illegal monetary gain by cancelation and refund of stolen tickets. This witness when cross examined, stated that I was not present when the conversation between the claimant and other wrong doers happened, but I was posted during that period in my office in terminal one. It is fact that I do not have personal knowledge but know everything in official, capacity.

57. The workman in his statement of claim has admitted that he was working as Senior Traffic Assistant in Booking Office, Safdarjung Aiport, New Delhi at the time of his illegal, unjust, obituary and wrongful dismissal with effect from 13.07.2012. In the claim statement nowhere, he had stated about his place of posting during the incident in

question in respect of which the charges are labelled upon him in the enquiry as well as in FIR lodged by CBI. However, he has admitted that the alleged incident took place in the year 1999. The claimant has not disclosed his place of posting during the period of incident in the year 1999, in the intervening night of 10/11 October on the other hand the management witness produced before the tribunal on 30.03.2022 to prove the misconduct committed by the claimant/workman, very clearly and unambiguously has stated that the workman Mr. F.G.Runda was approached by the other delinquent colleagues in the enquiry including the present claimant as well as co accused in the CBI case was approached at his work place Safdarjung booking office and requested by them to validate 100 stolen tickets by putting the impression of Bradma ticket validator of Safdarjung booking office. The witness MW1 Mr. Tarun Mathur is not cross examined by the claimant/workman on this statement. In his reply dated 04.08.2003 as against the show cause letter dated 21.07.2003 also he has not rebated his presence in official capacity at the place of incident. In the Indira Gandhi International Airport; booking office therefore his presence at the place of incident is strongly possible. However, the fact of complicity in the plan/conspiracy to commit the offence is subject to the proof in the criminal court on reliable evidences. So far as the incident and place of incidence as well as posting of the workman/claimant is concerned it stands admitted by the claimant himself for want of denial on his part. This was sufficient to create a reasonable apprehension as to the involvement of the claimant in the incident with the charge of which he is assigned in the domestic enquiry is prima-facie established which led to his termination from service. The claimant/workman thus is proved to have been terminated from service of the management by reason of loss of confidence in him. It is immaterial at this stage that the enquiry proceeding is vitiated by the tribunal.

58. The Apex Court in *Indian Airline V. Prabha G. Tanadan Air 2007 Supreme Court 548* has held that 'loss of confidence cannot be subjective but must be based on objective facts which would lead to definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved. Hon'ble Apex Court in the case of *State Bank of India and Another V. Bela Bagchi & Sons (AIR 2005 SC 3272)* held that 'even if from the misconduct of the employee the employer does not suffer any financial loss, then also he can be removed from service on the ground of loss of confidence.' It is further held by the Apex Court in *A.P.S.R.T.C. V. Raghuda Shiva Shankar Prasad, Air 2007 SC 152 that* - 'It is settled legal proposition that in a case of misconduct of grave nature like corruption, theft, no punishment other than the dismissal may be appropriate.

59. In the case of, *L. Michael & Another V. M/s Sons India Ltd. Air 1965 Supreme Court 661 (1975 S.C.R. (3) 489)*. The Apex Court held that 'Need less to say', the Apex Court recognised the power of the tribunal to go behind the form of the order, look at its substance and as such authorises to masquerade termination, if in reality it cloaked a dismissal for misconduct as a colourable exercise of power by the management.....On the facts of the *Air India case (Supra)* the court concluded that it was not possible to hold this order to be based on any conceivable misconduct. Special difference was made to the grave suspicions regarding the complainant's private conduct with Air Hostesses. Where no misconduct is firmed, the action and the delicate unstupidity for the job vis-a vis a young women in employment in the same firm is strongly suspected, resort to termination simply cannot be criticised as a malafide machination. In that background the action was held to be bonafide and the overall unsuitability laid to a loss of confidence in the employee. Not that the loss of confidence lagged exalted as a ground but the special circumstances of the case exalted by face in this charge simpliciter.

60. In the present case before this tribunal where the workman/claimant was dismissed from services in the background of criminal act like theft, misappropriation of stolen ticket, wrongful gain, fraud, breach of trust and conspiracy is bona fide and not to victimise the delinquent workman/claimant by his dismissal. There are sufficient materials in addition to the criminal prosecution against the workman/claimant, accomplice colleagues and other co accused to infer their complicity in the incident which reasonably led in domestic enquiry and to the punishment for misconduct. The management establishment has suffered loss not only monetary but to their credibility in out world with the regard to their services rendered to the public. Loss of confidence of the employer establishment emerged since the very inception, in the facts and circumstances of the case, which raised apprehension in the minds of employer that it would be embracing and detrimental to retain the workman/claimant anymore in the service of management establishment.

Reinstatement?

61. When this Tribunal has reached at finding that in the background of admitted and proved facts and circumstances, the action of management is bona fide and the overall unsuitability and unworthiness led to the loss of confidence in the workman/claimant, this tribunal does not find justification to order reinstatement of the workman in services of the management with all consequential benefit. However, in the Hon'ble High Court parties to this industrial dispute, through their learned counsel agreed to restrict the claim before the tribunal to the extent of compensation only. It is pertinent to note that when a workman is dismissed/terminated/discharged from services for misconduct resulting into the loss of confidence it would be important in consideration over the claim of reinstatement and compensation both. In the present case this tribunal has concluded that the termination of the workman resulted from his misconduct, consequently disinclines to order reinstatement. Even if a workman is cleared of charges relating to misconduct, if the matter involves loss of confidence the courts would be disinclined to order reinstatement.

Retrenchment compensation if may be granted ?

62. Whether termination due to loss of confidence amounts to retrenchment ?

- Before going into the discussion on the issues of compensation it shall be pertinent to reproduce the definition of Retrenchment as provided in section 2(oo) and the provision of retrenchment compensation in provision of section 25F of the Industrial Disputes Act, 1947 (in brief the I.D. Act).

2 (oo) "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

2*[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

"25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay² for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government³ or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

- Obviously the aforesaid stated provision of I.D.Act excludes and excepted the case of terminations as punishment. Moreover the I.D.Act defines the term retrenchment in an expansive manner to mean termination by the employer of the service of workman for "any reason whatsoever". The Apex Court in the case before it titled as **Hari Prasad Shiva Shankar Shukla V. A.D.Divakar (1951 (1) SCR 121)** ruled that "for any reason whatsoever". Covers only instances involving discharge of surplus labour or staff by the employer, termination of work as for any other reason would not constitute retrenchment and consequently the provision of section 25 G and 25H does not apply. Accordingly a workman dismissed for loss of confidence would not be able to claim retrenchment compensation of light of reemployment under the employer in accordance with I.D. Act.

63. Further the workman whose act and conduct resulted into loss of confidence in him in the mind of employer is made the basis of termination of his services as punishment on 13.07.2013 is held valid, bona fide and just by this court. Therefore, he does not deserve to the compensation in terms of back wages and other allowances after that.

64. The claimant/workman in his claim statement and also in written argument has impressed upon the benefits of parity as the legal representatives of one of his co-delinquent late Sukhbir Singh Sangwan were granted compensation in terms of the money to the tune Rs.11,00,000/-, but the present claimant/workman instead of treated equally with similarly situated Sukhbir Singh Sangwan in the present matter is denied to grant compensation. The benefit of parity with the legal heir of co-delinquent late Sukhbir Singh Sangwan died in December 2009, before the conclusion of enquiry how may be granted to the present workman who is alive and punished with termination of his services on 13.07.2012. Sukhbir Singh Sangwan died before the conclusion of enquiry and was not inflicted with the punishment of termination of service till then. Here is no justification to give benefit of parity to the present workman with LR's of the deceased co-delinquent Sukhbir Singh Sangwan. The case law referred by the claimant/workman in **Ram Dev Singh V. Union of India (2009 (121) FLR 131)** (Delhi High Court) does not apply, as the facts, circumstances and issues involved are different in the present case.

65. Learned AR for the workman/claimant Sh.Inderjit Singh in the course of arguments relating to the issue of compensation impressed on the dilatory tactics adopted by the employer in the enquiry of the incident in issue. In the present matter the incident dated 10/11 October 1999, was enquired in very slow manner. The management issued charge sheet in the year 2003, in as much as more than 11 years were consumed in conclusion of the enquiry. Almost 15 years from the commission of the incident were elapsed in conclusion of the enquiry which ultimately culminated into the termination of services of the workman/claimant. It is also impressed that on bringing the dispute in the adjudicatory process before the industrial adjudicator by the claimant in the year 2014, the industrial dispute though promptly raised the management strategically dragged on the proceedings for almost further 9 years. The learned AR

argued that the claimant/workman must be compensated in terms of money for the loss of time valuable for the life and livelihood of the claimant and his family member. Compensation must be given for the mental trauma and harassment. Learned AR for the management/opposite party strongly opposed the claim to the compensation on the ground of dilation of enquiry and a long period consumed in the industrial adjudication, as the present workman/claimant also contributed in dilation of the enquiry proceeding this way or that way on various grounds, because he knowing very well the nature of his misconduct was afraid of any possible adverse result in the enquiry.

65. After hearing the learned AR and on perusal of the enquiry proceeding, I found that sometime delay in enquiry proceeding occasioned due to change of enquiry officer in the course of proceeding. It had also been found that adjournments were sought by the delinquent workman also. Since domestic enquiry was being conducted and substituted by the department through the enquiry officer appointed in accordance with standing order. The expeditious disposal was in the hands of the enquiry officer who should not have proceeded the enquiry loosely granting repeated adjournment. In the aforesaid circumstance none of the parties to the enquiry proceeding deserved to be blamed for delaying tactics solely. Therefore, compensation on the ground of dilation of enquiry proceeding for a considerable long period as much as 13 years may not be granted by this tribunal on account of physical sufferance, mental trauma, embarrassment and harassment.

AWARD

For the reasons and discussion made here in above the overall fact and circumstances are such that the termination of services of present workman/claimant F.G.Runda is legal and valid on the basis of loss of confidence. The claimant/workman is not entitled to be granted any relief either reinstatement with back wages to any extent or compensation in terms of money in lieu thereof. The claim is hereby rejected. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA, (Retd.) Presiding Officer

Date: 31.05.2023

Vanshika Saini

नई दिल्ली, 16 अक्टूबर, 2023

का.आ. 1699.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 76/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/10/2022 को प्राप्त हुआ था।

मणिकंदन एन., उप निदेशक

[सं. एल.20013/01/2023-आई. आर. (सी.एम-1)]

New Delhi, the 16th October, 2023

S.O. 1699.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 76/2014**) of the **Central Government Industrial Tribunal-cum-Labour Court NO. 1, New Delhi** as shown in the Annexure, in the industrial dispute between the Management of **Air India Limited** and their workmen, received by the Central Government on **05/10/2023**.

[No. L-20013/01/2023 – IR (CM-I)]

MANIKANDAN N., Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1 NEW DELHI.

Present : **Justice Vikas Kunvar Srivastava (Retd.)**
(Presiding officer)
CGIT, Delhi-1

(In ID. No.76/2014)

Shri Sanjay Kaura,

Employee No. 266396,

K-16-A, Saket, New Delhi – 110017

Claimant

Versus

Air India Limited,
Through its General Manager(P),
Northern Region, Personal Department,
IGI Airport, Terminal – 1B,
New Delhi – 110037

Management ...

Shri Inderjit Singh, A/R for the claimant.

Shri Lalit Bhasin, A/R for the management.

AWARD

Prologue

An application under section 2A (2) of the Industrial Dispute Act, 1947, was moved before this tribunal (CGIT-1 Delhi) by the claimant/workman Shri Sanjay Kaura on 21.08.2014, with allegations in the claim statement that, he was working as Senior Account Assistant at Jet Engine Overhaul Complex, Finance Department, Indira Gandhi International Airport, New Delhi when his services were terminated illegally and arbitrarily by the opposite party on 13.07.2012.

2. It is further alleged in the statement of claim that despite good service record, the workman/claimant was issued a charge sheet dated 11.02.2003 to the following effects:

This is further to letter No.DED/1/22/1508, dated 7.12.2000 placing you under suspension.

That during the year -1999 you were working as Sr. Accounts Asst. at Bill Passing Section, IGI Airport, at IGI Airport, Palam, New Delhi. That while functioning as Sr. Accounts Asst., you (Sanjay Kaura), S/o Shri. P.K. Barthwal, Sr. Accounts Asst., Sukhbir Singh Sangwan, Sr. Traffic Asst., F.G. Runda, Sr. Traffic Asst., D.K. Kharbanda, a travel agent and Brijesh Kumar Gautam, Contractual Book binder with IAL made a plan in the year 1999 to take out the stock of CVDs unauthorisedly from TAL, CVDS Store and thereafter make illegal money by getting the ticket cancelled and refunded from the various IAL stations.

That you and Shri D.K. Kharbanda, travel agent received the Bundle of 100 blank manual TAL double sector tickets bearing numbers 058-2200208701 to 058-2200208800, which was taken out unauthorisedly by Shri P.K. Barthwal during last week of September, 1999 from CVD Store Palam by dodging the staff on duty.

That you and Shri D.K. Kharbanda, travel agent approached Shri F.G.Runda, St. Traffic Asst, IAL posted at Safdarjung Booking office and requested F.G. Runda to validate 100 stolen tickets bearing Sr. No. 0582200208701 to 058-2200208800 by putting the impression of Bradma ticket validator of Safdarjung Airport booking office. During the night hours passengers rarely visit booking office, accordingly F.G. Runda agreed to validate the tickets during night duty after assurance of a share in the refund amount. In the intervening night of 10/11.10.1999, You and Shri D.K. Kharbanda reached Safdarjung Booking office in the mid night when F.G. Runda was on duty. By avoiding the attention of the other IAL Staff on duty, F.G. Runda took out unauthorisedly the said bradma ticket validator maching out side booking office and all the hundred tickets were embossed by putting its impression. Thereafter the machine was put back at the same place. (from where you had taken it) by F.G. Runda.

That you and Shri D.K. Kharbanda requested Shri Arun Kumar Rao @ Baboo to write two tickets bearing Numbers 058-2200208701 and 058-2200208702 as per your directions, which were accordingly written by Shri Arun Kumar Rao @ Baboo. Other tickets were also got prepared by Shri D.K. Kharbanda with the help of one Parvin Bakshi. Thereafter Shri D.K. Kharbanda along with Shri Parvin Bakshi visited booking. Office at Guwahati, Calcutta, Chennai, and Bangalore, from where refunds were obtained and in case of any problem manual tickets were got re-routed in order to obtain refund on the re-routed tickets.

That after obtaining refunds on some of the stolen tickets from various IAL outside Delhi, Shri D.K. Kharbanda met you and S/Shri P.K. Bhartwal, F.G. Runda, Sukhbir Singh Sangwan, Brijesh Kumar Gautam at Delhi, where amount obtained through refunds unauthorised tickets/ and re-routed tickets were distributed among you and the above said persons. Further Programme to obtain refund was also chalked out.

That you along with Sukhbir Singh Sangwan and Shri D.K. Kharbanda of S. Kaura, and you reached Mumbai on 16.11.1999 by flight IC-165 in the morning. IAL booking office, Santacruz Airport, Mumbai IAL ticket number 058-2200208762 incidentally prepared in the name presented the said ticket and refund of Rs. 13,640/- was obtained. Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda also obtained refunds by submitting tickets in their names.

That from Santacruz Airport, Mumbai you along with Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda visited IAL city booking office, Mumbai and presented IAL ticket Number 058-2200208739 to 058-2200208748 belonging to the lot of 100 tickets unauthorisedly taken out. After getting these tickets cancelled fresh re-routed tickets bearing number 058-2251821777 to 058-2251821786 were obtained.

That from Mumbai, you alongwith Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda reached Pune in the late evening on 16.11.1999 and stayed in Hotel Shrimaan, Pune. Next day i.e., on 17.11.1999, all three of you visited IAL booking office Pune from where refunds on ticket number 058-2200208788 to 058-2200208791 belonging to the lot of 100 tickets unauthorisedly taken out was obtained.

That you along with Shri Sukhbir Singh Sangwan and Shri P.K. Kharbanda visited Goa from where refund on ticket number 058-2200208792 to 058-2200208793, and 058-2200208768 were obtained in two Instalments.

That you also got refunded 2 IAL tickets bearing number 058-2251191177 and 058-2251191178 through Shri Brijesh Kumar Gautam. These tickets were presented at IAL booking office, Malhotra Building, New Delhi and refund was managed by Shri J.P. Rath, Sr. Traffic Asst. who also happens to be close friend of you.

That when matter came to the knowledge of IAL authorities, an enquiry was taken up, with a view to shield yourself, with the help of Sukhbir Singh Sangwan and other certain employees of IAL, after finding suitable opportunity got replaced/destroyed relevant refund vouchers (RF-9) pertaining to IAL, Mumbai. That from the period June-1999 onward you have failed to maintain absolute integrity and devotion to duty and therefore you are hereby charged as under:-

That you dishonestly accepted blank IAL manual double sector tickets of the series 058-220-0208701 to 058-220-0208800 taken out by Sh. P.K. Barthwal unauthorisedly from the stock of IAL, got validated said tickets unauthorisedly by using the BRADMA validator machine of IAL, Safdarjung Booking Office with the help of F.G. Runda, Sr. Traffic Assistant and Devender Kumar Kharbanda @ David, a travel agent in the intervening night of 10/11.10.9.

That you unauthorisedly thereafter got said tickets prepared with the Help of Arun Kumar Rao @ Baboo and D.K. Kharbanda etc, and deputed DEK. Kharbanda to obtain refund on the said tickets from various IAL booking offices.

That you visited (IAL Booking Offices at Mumbai, Pune and Goa etc. along with Sh. Sukhbir Singh Sangwan, Sr. Traffic Assistant, IAL New Delhi and D.K. Kharbanda, a travel agent in the second fortnight of November, 99 and obtained and managed refund unauthorisedly on the tickets connected to the lot of 100 tickets unauthorisedly taken out by Sh. P.K. Barthwal from the stock of IAL.

That you unauthorisedly accepted six IAL tickets connected to said lot, gave to his friend Sh. Sanjay Verma and got refund obtained from Safdarjung Booking office with the help of Sh. F.G. Runda.

That you unauthorisedly got refund on two IAL tickets related to the lot of 100 tickets through Brijesh Kumar Gutam from IAL Booking office, Malhotra Building, New Delhi which was got released by requesting Sh. J.P. Rath who was posted as Sr. Traffic Assistant there.

That you unauthorisedly with the intention to conceal the gross misconduct committed by you got relevant refund vouchers (RF-9) destroyed and replaced from the record of Central Revenue Account (CRA), New Delhi when enquiry into the matter was taken up by the IAL and tries to scuttle the same.

That you, acted in a manner, dangerous and detrimental to the IAL which ultimately contributed and led to the loss of Rs. 6,67,390/- to TAL. Thus you committed gross misconduct.

Your above acts, if proved, would amount to breach of Standing order 1 and misconduct within the meaning of Clause 16(4), 16(16), 16(43) of the Standing orders (Regulations) concerning Discipline & Appeals as applicable to you, which read as under:

Standing Order 1:

Every employee of the company shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests, credit and prestige of the company.

Clause 16(4):	<i>Theft, fraud and dishonesty, in connection with business or property of the company.</i>
Clause 16(16):	<i>Willful damage to any property of the Company.</i>
Clause 16(43):	<i>Abetment of or attempt.</i>

Evidence which is proposed to consider in support of the charge:

1. *Evidence of Shri Ramesh Malhotra, Retd. Sr. Manager (Vigilance) and his oral evidence.*
2. *Evidence of Shri D.A. Singh, Retd. Sr. Manager (Vigilance) and his oral evidence.*
3. *Evidence of Shri J. Chandrahassan, Sr. Vigilance Asst. and his oral evidence.*
4. *Evidence of Dry Sushil Kumar Gupta: DSP, and his oral evidence.*
5. *Statement dt. 1.9.2000 of Shri Samar Singh and his oral evidences.*
6. *Statement dt. 24.8.2000 and 30.10.2000 (5 Sheets) of Shri Sanjay Verma and his oral evidence.*
7. *Evidence of Shri Brijesh Kumar Gautam.*
8. *Evidence of Shri Pravin Bakshi.*
9. *Evidence of Shri Arun Rao Baboo.*
10. *Evidence of Shri J.P. Rathi.*
11. *Ticket No. 058-2200208763, 058-2200208739 to 058-2200208748, 058-2200208788 to 058-2200208791, 058-2200208792, 058-2200208793 and 058-2200208768.*
12. *Ticket No. 058-2251821777 to 058-2251821786, 058-2250960195, 058-2250960197, 058-2250960199, 058-2250960200, 058-2250960203, 058-2250960205, 058-2251191177 and 058-2251191178.*
13. *Any other evidence oral or documentary in support of the charge.*

You are hereby required to put in a written statement of your defence in reply to the above charges within seven days of receipt hereof. You are warned that if no statement is received from you by the undersigned within the time allowed, it will be presumed that you have none to furnish and order will be passed in your case accordingly.

You are further required simultaneously to inform the undersigned in writing whether you desire to be heard in person, and, in case you wish to examine or cross examine any witnesses to submit along with your written statement their names and addresses together with a brief indication of the evidence which each such witness will be expected to give.

3. The workman/claimant replied the above charge sheet denying charge of misconduct labeled over him. He challenged the enquiry proceeding conducted by the enquiry officer that it was under the dictate and pressure of the management without application of his own mind. They did not permit him, help of a legal practitioner in the proceeding. Extraordinarily the enquiry was delayed which took 13 years from the time of incident of 1999 as the punishment order was issued on 13.07.2013. Even the appeal of the workman against the punishment order was dismissed vide a liconic and sketchy order on 21.08.2013, when the workman raised the industrial dispute in this regard before the Regional Labour Commission (Central) under section 2A of the I.D. Act, 1947, the management did not response to that due to which conciliation attempt was failed. Having no hope from the management the present application before the tribunal is moved wherein the validity, fairness and legality of the dismissal order dated 13.07.2013 is challenged.

4. The application of workman is contested, filing a written statement by the management, stating that the workman was rightly dismissed from service of the management. A valid and proper domestic enquiry was conducted prior to the dismissal ordering to the delinquent workman in accordance with the principle of natural justice workman was given due opportunity to defend him against the charges with which he was assigned. The written statement has also describe in detail the responsibility of the post on which the workman/claimant had appointment and his conduct during his employment in conspiracy with

some of the office bears and a travel agent which arraigned him which constitute charges of serious misconduct.

5. Vide order dated 28.05.2015 on the basis of pleadings of the contesting parties following two issues were framed:

“1. Whether the domestic/enquiry conducted by the management is not just & fair and is against principles of natural justice?

2. Whether termination of services of the claimant is legal and valid, as alleged?”

6. It is further ordered that issue no1 which pertains to the domestic enquiry will be treated as preliminary issue and claimant to lead evidence on the above issue. Both the parties led their evidence.

7. The claimant submitted his affidavit as the statement if examination in chief and cross examination by the management’s representative, in turn the management produced its witness if evidence Sh.Ashwani Sehgal who submitted his affidavit in examination in chief and was cross examined by claimant’s authorized representative. This would be pertinent to state that tribunal vide it’s order dated 09.02.2018 directed to read and consider the statement of the said management witness ‘Ashwani Sehgal’ recorded in the case of co-delinquent workman F.G.Runda in I.D. No.76/2014. Arguments on the basis of material documents and evidence adduced before the tribunal heard with regard to the said issue No.1 and order passed by the CGIT on 10.08.2018.

8. The tribunal vide its order dated 10.08.2018 held that the domestic enquiry against the claimant was conducted violating the principal of natural justice to the prejudice of workman in an unfair manner. Consequent upon the above finding the tribunal further held that the order dated 13.07.2013 passed by the disciplinary authority dismissing the services of the workman cannot legally survive. With the above findings the tribunal further opined that the management should be given opportunity to adduce evidence on merit of the charges labelled against the workman in the charge sheet.

9. The management aggrieved from the aforesaid order of the tribunal dated 10.08.2018 impugned the same in writ petition WP(C) No.426/2019 Air India Ltd. V. Sanjay Kaura which was heard and decided with the WP(C)No.415/2019 filed against the same order of tribunal of the same date passed in the case ID no. 63/2014 F.G. Runda V. Air India Ltd., vide its judgment on 03.07.2019 Hon’ble Delhi High Court made several observations hearing the learned counsel for both the parties.

10. The relevant para’s 4,5 and 6 are carved out from the judgment on 03.07.2019 being reproduced here under with due regard –

“4. Mr. Lalit Bhasin, learned counsel for the petitioner submits that these are clear cases of loss of confidence by the petitioner in the respondents and no inquiry was required to be conducted by the petitioner for the first instance as per the principles laid down by this Court in **State Bank of Travancore v. Prem Singh, 2019 SCC Online Del 8258** in which this Court, held that the employee can be terminated without inquiry in the case of loss of confidence. This Court further held that even if the inquiry was held to be bad, the employee is not entitled to reinstatement but only compensation.

5. Learned counsel for the petitioner submits that both these cases are squarely covered by the principles laid down by this Court in **State Bank of Travancore** (supra) and, therefore, even if the inquiry is held to be vitiated, the respondents are not entitled to reinstatement but only compensation. It is submitted that this submission is without prejudice to the petitioner’s case that there has been no violation of principles of the natural justice. It is further submitted that the learned Industrial Tribunal be directed to hear the matter afresh in terms of the principles laid down by this Court in **State Bank of Travancore** (supra).

6. Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in **State Bank of Travancore** (supra). It is further submitted that the petitioner paid about Rs. 11,00,000/- to the legal representatives of similarly situated charge-sheeted person and the respondents claim parity with respect to the compensation paid to the legal representatives of the situated person.”

11. Hon’ble the Delhi High Court with the above quoted observation in its judgment remanded back the matter to hear and decide afresh with the direction on 3.07.2019 in Para 8 of the judgment dated 03.07.2019.

“Para- 8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this

Court in State Bank of Travancore (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions."

12. The matter was heard afresh by the tribunal in the terms of the direction of the Hon'ble High Court and a detailed discussion is made for reaching at a conclude recorded in order of the tribunal date 16th February 2022. The tribunal disposed of the prayer of the management for an order on the issue of loss of confidence vide order of the same date the relevant is reproduced as under:

"In this case by order dated 10.08.2018 the tribunal has already formed an opinion about the defects in conduct of the domestic inquiry and found the same unacceptable. That means there is no material before this tribunal to adjudge the legality of the punishment inflicted by the management on the claimant workman.

Furthermore, when the management opted to conduct a domestic inquiry and not to proceed under Regulation 13 empowering the management to terminate the job of the employee without any inquiry, at this stage when the domestic inquiry has been found to be unfair and vitiated, it cannot press the provision of Regulation 13 into service. If this stand of the management would be allowed the same would amount to giving the opportunity to the management of switching over from one procedure to another when its earlier action was found defective to the advantage of the workman.

The argument advanced by the management to accept the order of termination for the loss of confidence without asking for further evidence to prove the charge is thus held not acceptable under law and the same is rejected.

Since it is an extremely old matter pending since 2014 and the service of the workman was allegedly terminated in 2013 it is felt proper to take up the matter on an early date without further delay. The management is thus called upon to adduce evidence to prove the charge against the claimant positively on 14th march 2022. It is made clear that no adjournment shall be allowed to the management for adducing evidence beyond that date."

13. Aggrieved from the above said order of the Tribunal dated 16th February 2022, the management again approached the Hon'ble High Court with WP (C) No.893/2022 and WP(C) No.8148/2022 for quashing set-aside the impugned orders. The grievances raised before the court that the tribunal over looked the direction of the Hon'ble High Court of Delhi in its judgment and passed the impugned order without the Hon'ble High Court of Delhi stayed the impugned order dated 16.02.2022.

14. After hearing the consenting parties in the matter, the Hon'ble High Court of Delhi in para '5' of it's judgment dated 24.08.2022 in WP(C) No.8948/2022 and WP(C) No.8931/2022 made following observations:

"5. It is an accepted position that this order has not been challenged by either of the parties. The implications of the order dated 03.07.2019 as contained in para 8 in W.P.(C) Nos. 426/2019 and 475/2019 are as under:

- (i) The learned tribunal should have examined the matter afresh in term of the principles laid down by this court in State Bank of Travancore (supra). Thus, if the termination of the employees was found to be on the basis of loss of confidence of the management, in accordance with the principles laid down in State Bank of Travancore (supra), the claim of the claimants would be confined to only compensation and;*
- (ii) If the learned tribunal finds that the removal of the workmen was not on the loss of confidence and was not on the basis of the principles laid down in State Bank of Travancore (supra) then the tribunal would be proceeded with the recording of the evidence of the petitioner management for proving the charges against the claimants/workmen."*

15. Further in Para 7 of the judgment dated 24.8.2022 it is observed that:

"7. However, it seems that the learned trial court has not gone in accordance with the directions of this court as contained in the order dated 03.07.2019 and therefore, the impugned order is liable to be set aside and is set aside".

16. Following direction given to the Tribunal by the High Court which are content in Para 8 of the judgment on 24.8.2022.

"8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in State Bank of Travancore (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions."

17. The order of the Hon'ble High Court dated 24.08.2022 was received to this Tribunal on 1st of September 2022 parties to this industrial dispute through their authorized representative appeared before the tribunal and agreed to submit their arguments on 22.09.2022.

FACTUAL MATRIX

18. As comes out from the pleading of the parties and the charge sheet issued for domestic enquiry of the ascent claimant/workmen with other co-delinquents the incident of taking out unauthorisedly the bundle of 100 tickets misusing his official position by the present claimant/workman and the other employees and outsiders involved with him in the conspiracy was taken cognizance by the Central Bureau of Investigation. A criminal case was lodged by it in the competent court. It is admitted that as the claimant in his statement of claim while assailing the charge sheet issued to him for the proposed domestic enquiry has pleaded that the charges levelled against him were identical with charges levelled by the CBI in criminal court vide FIR dated 24.05.2000. Further in the rejoinder to the written statement by the management the claimant has cited the statement of Dr. Sushil Gupta (MW30) who investigated the case on behalf of CBI in the capacity of Deputy SP, who deposed that, 'basically the case pertained to 100 tickets which were stolen from the lot of 50 thousand tickets and the same were misutilised. In the course of the investigation it was found that all four charge sheeted employees namely Mr. P.K.Barthwal, Mr. Sanjay Kaura, Mr. F.G.Runda and Mr. Sukhbir Singh in conspiracy with each other alongwith two private persons Mr. D.K.Kharbanda and Mr. Brijesh Kumar had been instrumental in committing theft.

19. This court passed its judgement and award by which vitiated the enquiry on the ground that the enquiry officer conducted the enquiry in violation of principle of natural justice, to the prejudice of the workman, as well as in an unfair manner, resultantly the order dated 13.07.2012 passed by the disciplinary authority cannot legally survive and sustain as held unfair and against the principles of natural justice. The tribunal further opined, an opportunity be granted to the management to adduce evidence on merit on charges as mentioned in the charge sheet. It clearly means that the enquiry was assailed on the technical grounds emerging from the step wise requirement which were found by the tribunal irregularly or unsatisfactorily complied with, like non production of all the witnesses during the enquiry, non-supply of all the document relevant to the enquiry.

EVIDENCE

20. On completion of pleadings for and on behalf of the respective parties to the industrial dispute, the tribunal preferred to frame the issues. The tribunal required the parties to file their documentary evidences exchanging copies thereof to each other. On 15/04/2015 as the order sheet of the case reveals one Ranjan Jha, appeared for the management and filed, the copy of the enquiry proceedings alongwith documents taken into consideration in the enquiry which were taken on record. The copy of those were receive don behalf of the claimant on the same day by his AR Sh.Vijay Kumar. Singh the documents were voluminous, the parties were given further time to endorse thereon their admission or denial on 03, July 2015 and again on 06/08/2015. On 28/09/2015, the date fixed for framing issues, though the managements AR endorsed denial/admission of the documents filed by the claimant, but the AR for the claimant did not admit or deny any of the document of the management. After framing of the issue the claimant, himself offered his testimony by filing an affidavit of examination in chief. In its turn the management produced its officer in evidence, Sh.Ashwani Seghal, whose affidavit of examination in chief is on record, and was cross examined.

21. The management having been called upon had produced documentary evidence in the form of enquiry proceeding and the documents referred there in on affidavit providing, a copy thereof to the claimant. The parties were further called upon to admit or deny specifically each other's document, so produced before the tribunal. The management endorsed it's specific admission/denials on the documents produced in evidence by the claimant but claimant though throughout represented and present in the proceedings before the tribunal, despite opportunity given to him, did not endorsed his admission or denial on the management's documents produced in evidence. He ignored and neglected to admit or deny specifically. It is established principle of law as to the "admissions" that every document which was called upon to admit, if not denied specifically or by necessary implication or not stated to be admitted by the party in their pleading, shall be deemed to be admitted. Hence in the present case, the enquiry proceeding and the documents referred therein shall be deemed to have been admitted and therefore shall be taken into consideration of the nature and of the charges levelled against the claimant.

22. When the tribunal allowed the management to produce evidence of charges in the domestic enquiry against the claimant and the management produced the document in support of the charges which had not been denied by the claimant, the same shall be treated as admitted, un rebutted piece of evidence and the tribunal may record it's finding while adjudicating the industrial dispute it pertaining to dismissal of the workman (claimant of the present case) in consonance with the relevant pleadings of the parties in that regard.

23. The position of workman holding an office of trust and confidence by virtue of his appointment by the management. This is admitted fact that the claimant whenever was appointed in the year 1990 by the management and was working as Senior Accounts Assistant in Financial Department at Indira Gandhi International Airport, New Delhi. When he was dismissed from service with effect from 13/07/2012. This holding the office of trust from by the

claimant workman in the establishment management in admitted when need no further evidence.

24. This would further be relevant to state that the aforesaid first information report lodged by the CBI and the criminal proceeding running in criminal court were never challenged in any court of law. Alleging them false and fabricated against them. The statement of aforesaid management witness Dr. Sushil Gupta (MW30) is available in the record of enquiry proceeding and presented before this court also which prima-facie show and establish the fact of involvement of present claimant/workman. Acting misusing his official position of holding an office of trust when involved himself in theft, misappropriation and breach of trust to make wrongful gain for himself. Admittedly the domestic enquiry instituted subsequent to the lodging of the First Information Report by the CBI. This undoubtedly was sufficient to make reasonable apprehension in the minds of the authorities of the management in regard to the trust worthiness of the present claimant/workman. As such the fact continuing the loss of confidence of the employers (management) is pleaded and established by the management.

25. The management witness was produced before the tribunal on 30.03.2022 has stated on oath in the cross examination that he is aware of the misconduct committed by the claimant who has misused his official capacity, stolen and misused appropriated ticket of Air India unauthorisedly. Document in this aspect have already been placed on record and exhibited as MW1/2 to MW1/4. He further says that it would be incorrect to suggest that these documents are no way relevant for the alleged misconduct against the claimant (workman). It is also wrong to suggest that having not been posted in the booking office the witness has no knowledge about the alleged incident and deposing falsely.

26. The documents above referred produced and proved by the management in support of their charges shall stand admitted by reason of their non denial. The original document relating to the culpable act of the claimant/workman in the incident are also with the knowledge of claimant/workman taken by the CBI in their custody and reserved for submission before the criminal court in criminal case pending there with regard to the incident. The CBI investigator in his statement had also stated the said fact before the tribunal as witness MW30 Dr. Sushil Gupta.

Argument

27. Learned AR for the claimant/workman argued in the context of order of remand passed by the Hon'ble High Court of Delhi dated 03.07.2019 that on 19.10.2022 in Writ Petitions No. 8931/2022 & 8948/2022. It is submitted that these writ petitions were filed by the management assailing the order dated 16.02.2022 of the CGIT in which the management had suppressed the vital fact that it had already complied with the direction in the said order and produced Mr. Tarun Mathur on 30.03.2022 before this tribunal. The deposition of Mr. Tarun Mathur is available on the records of the case before the tribunal. The management therefore is guilty of concealment, as such, being uncleaned is liable to be thrown out for this reason alone. The learned AR further argued that previously the management conducted enquiry against the claimant/workman which is dragged by him for considerable period of 19 years. However, when they found that it was not possible to prove the misconduct against the claimant/workman, they suddenly changed their goal post and adopted a totally new plea of loss of confidence on 03.07.2019 for the first time in the Hon'ble High Court. The said plea of loss confidence was, therefore, neither bona fide nor legally permissible. Learned A.R. vehemently argued that in view of the case law propounded by the Apex Court in the case of **Kanhaiya Lal Agrawal V. Factory Manager, Gwalior, Sugar Factory (2001) 9 SCC 609**. The management had not fulfilled the essential norms set by the court that it is not pleaded and proved by the management that the workman was holding the post of trust and confidence 'and by abusing such position, committed such act which resulted serious misconduct and also that to continue him in service would be inconvenient to the employer or would be detrimental to the discipline and security of the establishment. He further impressed on the well settled law that what is not pleaded can not be proved and that a totally new plea is not permissible in law. Further it is argued that Hon'ble Supreme Court in the case of **Prabhakar V. Sericulture Department (2015) 15 SCC 1** that right not exercised for a long time shall be treated on non-existent.

28. Learned AR further argued that the burden of proof of the charges is on the employer as it is explained by the Apex Court in the case of **Delhi Cloth Mills V. General Wheel Company**. Management remained unsuccessful in discharging his burden the next argument of the learned AR is to give benefit of the parity as in the same matter the management itself granted the other charge- sheeted employees. The Sukhbir Singh Sangwan's legal representative who expired in December 2009 by paying the compensation. The present workman/claimant is denied. The doctrine of equity applies to all those who are equally placed, even persons who are found guilty. In his support learned AR referred the judgment of Apex Court in case of **Rajender Yadav V. State of M.P. 2013(137) FLR 239**.

29. Learned AR for the management further impressed on stated that the workman/claimant is not entitled to reinstatement but only compensation, which is also somersault as they have stated before the tribunal while submitting their written argument that the workman is not entitled for either reinstatement or entitled for back wages or any compensation. In this connection the learned AR further argued that the persistent efforts of the management has been to delay the proceeding in the present industrial dispute also violative of the right to life of the workman as mandated in the Article 21 of the constitution of India.

30. The learned AR impressed on that vis-a-vis the domestic enquiry in the matter the CBI has also prosecuted of the workman for serious offenses and no charge have been framed in the said case even after 22 years.

31. Learned AR has relied on case laws propounded by the courts which are **2013 (137 FLR 239 Supreme Court) in *Rajender Yadav V. State of M.P. and Kanhaiya Lal***.

32. On the other hand written submission of argument by the management is submitted. The learned AR for the management argued that the workman was senior traffic assistant at booking office and used to do the ticketing work. He alongwith Sh. D.K. Kharbanda, Travel Agent, Sh. Brijesh Kumar Gautam contractual book binder, take out of bundle of tickets, valued documents (CVDs) unauthorisedly from the store and make illegal money by getting the tickets cancelled and refunded from management's various airline stations. Thereafter an FIR was launched by CBI against the workman and other persons in conspiracy with him. The act of the workman is under the category of grievous misconduct. He emphatically argued that in view of the aforesaid misconduct the workman was suspended and charge sheeted, his reply was sought after getting relevant documents from the management. Further enquiry was conducted in accordance with principle of natural justice in practicality and fare play and in accordance with applicable standing orders of the management. The tribunal vitiated the aforesaid enquiry vide order dated 10.08.2018 and directed the management to lead evidence on the issue of misconduct. In the writ petition filed against the order the Hon'ble High Court disposed of petition vide order dated 03.07.2019 and referred back the matter before this tribunal hear the argument on the issue of loss of confidence in view of the principle laid down in the case of ***State Bank of Travancore V. Prem Singh*** dated 10.04.2019 by Delhi High Court (Supra).

33. Learned AR for the management further argued that sufficient evidence on record which are prima facie evidences against the workman which establish dishonesty and misconduct on the part of workman therefore management had rightly terminated his services on the ground of loss of confidence. Learned AR submitted that they were in reasonable and strong apprehension of misappropriation, theft and fraud and breach of trust on the part of employee causing financial loss to the company, therefore his dismissal/termination is immune from challenge and accordingly neither reinstatement may be ordered nor any compensation is payable. In the present case the 100 tickets of the Airline were stolen and that financial loss of tune approximately Rs. 7 Lakh has been caused to the airline is admitted position. Also it is the case of the workman that CBI has filed a criminal case before the competent court on the same charges which is pending. During the course of investigation by CBI certain statement of CBI officers were recorded. Learned AR in the light of such admissions emphatically submitted that above factual position is sufficient to create reasonable doubt and apprehension regarding integrity of the employee, who was holding position of trust with the management. Lastly, the learned AR submitted that in Para 6 of the judgment of Hon'ble High Court recorded the submission of the lead case of 2019 learned AR for the counsel for the workman that the claim of the workman would be confined to compensation only before the CGIT.

34. Reliance placed on the case laws propounded by the various courts including Apex Court which are as follows:

1. **All India Institute of Medical Scientist V. O.P. Chauhan Manu/DE/0321/2007.**
2. **Bharat Heavy V. Chandra Shekhar Air 2005 Supreme Court 2769.**
3. **Air India V. Revallo Air 1972 Supreme Court 1342**
4. **T.N.T.S. Corporation Ltd. & Oth. V. K.Meera Bai 2006 (2) S16255.**
5. **Sidhu Vishnu Banvalkar V. Bank of India.**

DISCUSSIONS

35. Heard the learned authorized representative of the parties to the present industrial dispute at a considerable length and gone through their detailed and descriptive written arguments in the light of their pleadings and evidences responding there to. At the very outset the learned AR for the management Sh. Lalit Bhasin Adv. urged that presently the court is to confine the hearing and decide the matter in terms and context of the remand order passed by the Hon'ble High Court on 03.07.2019 in W.P.(C) No.426/2019 and W.P.(C) 475/2019. He impressed on the undertaking of learned AR for the claimant/workman (Respondent in the aforesaid Writ Petitions) to restrict his claim before the CGIT to compensation only in view of the principle laid down in ***State Bank of Travancore (Supra)***. The said submission of learned AR for the claimant/workman is recorded by the Hon'ble High Court in Para 6 of the order, read by the learned AR for the management is being reproduced herein below:

- “6. *Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in **State Bank of Travancore (supra)**. It is further submitted that the petitioner paid about Rs.11,00,000/- to the legal representatives of similarly situated charge-sheet person and the respondents claim parity with respect to the compensation paid to the legal representatives of the similarly situated person.*”

36. Learned AR for the claimant/workman opposed the contention made by the management and submitted emphatically that matter before the tribunal is remanded to here and decide afresh and no such undertaking as recorded in the order dated 03.07.2019 is given ever on behalf of the claimant. However, no correction or modification of the order in this regard is sought from and ordered by the Hon'ble High Court at the behest of the workman. The order of remand by the Hon'ble High Court is explicitly made by the Hon'ble High Court in order dated 03.07.2019. Para 8 of the order runs as under:

“8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in **State Bank of Travancore** (*supra*). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions.”

37. For the reasons stated above this court shall proceed to decide the matter afresh in terms of the order of the Hon'ble High Court dated 03.07.2019 and on the basis of principle laid down in the case of **State Bank of Travancore** (*Supra*). With a view to examine the case before this tribunal of reinstatement of the claimant/workman Mr. Sanjay Kaura in service of the management with back wages and other consequential benefits, the tribunal has to evaluate whether termination of the workman is done on the basis of loss of confidence of the management. Further when it is found that the service of the workman is terminated by reason of loss of confidence the claim of the workman to compensation. In the direction issued by the Hon'ble High Court the tribunal is given liberty, in case the termination is not found on the basis of loss of confidence and in accordant with the principle laid down in the case of **State Bank of Travancore** (*Supra*), to proceed for recording of the evidence of the management. For the aforesaid purpose it would be pertinent to reproduce under the principle laid down by the Hon'ble High Court in the case of **State Bank of Travancore** (*Supra*) which are as follows:

“31. When an employee acts in a manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation can be awarded.

32. The plea of 'loss of confidence' by the employer has to be bona fide. Loss of confidence cannot be subjective. It has to rest on some objective facts, which would induce a reasonable apprehension in the mind of the management regarding the trustworthiness of the employee and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. Otherwise, a valuable right of reinstatement to which an employee is ordinarily entitled to, on a finding that he is not guilty of any misconduct, will be irretrievably lost to the employee.

33. The bona fide opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, is final and not subject to review by the industrial adjudication.

34. In case of misconduct resulting in loss of confidence, the employer is not bound to hold any inquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee. The employer, in its discretion, may invoke the power to discharge simpliciter for loss of confidence while dispensing with inquiry into the conduct of the workman. The departmental inquiry in such a case is not necessary.

35. The reinstatement of an employee terminated for loss of confidence cannot be ordered even if the inquiry held by the employer has been held to be bad.

36. The reinstatement of an employee terminated for loss of confidence for involvement in a criminal case cannot be directed even if the employee is able to secure a acquittal or discharge in the criminal case.

37. The reinstatement has not been considered desirable in cases where there have been strained relationship between employer and employee. The reinstatement is also denied when an employee has been found to be guilty of subversive or prejudicial activities. The Courts have also denied reinstatement in cases where long time has lapsed or where the industry itself has become sick.”

38. In view of the aforesaid above narration of the context and pleading in the present matter, I proceed further as follows:

Loss of Confidence

When the court or industrial adjudicator may go behind the order of punishment of dismissal to interfere.

In **Murugan Mills case (1965) 2 S.C.R. 149** the Apex Court has observed, ‘The right of the employer to terminate the services of his workman under the standing order, which amount to a claim to hire and fire the employee as the employer pleases and those completely negative security of service which had been secured to industrial employees. When the matter came before the Supreme Court in the case of management of **U.B.Dutt & Co. V. Workmen of U.B.Dutt & Co. 1962 Supplement. 2 S.C.R 822**, when the view taken by the labour appellate tribunal was approved

and it was held that even in a case like the present the requirement of bona fide was essential and if the termination of service was a colourable exercise of the power or as a result of victimisation or unfair labour practice, the industrial tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the tribunal can go behind the order to find the reason which led to the order and then consider for itself whether the termination was a colourable exercise of unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice, it would have the jurisdiction to interfere and set aside such termination.

What does 'Loss of Confidence' mean in termination of the service of the workman?

It means a break down in trust and confidence often cited as reason for dismissal termination linked or the finding of misconduct. For example that in the light of misconduct an employer has lost confidence in the employee to such an extent that, it is not possible that he can be retained in service any more.

39. In the present case the workman admittedly was appointed as Account Assistant on **25.04.1990** in Finance Department, Northern Region (Indian Airline Ltd.). Admittedly the workman (Mr. Sanjay Kaura) was holding an office of trust being Senior Account Assistant. In such capacity and official position in the year 1999, he alongwith his colleague Mr. F.G.Runda, (Senior Traffic Assistant), Mr. D.K.Kharbanda, (Travel Agent), Mr. Brijesh Kumar Gautam, (Contractual Book Binder) of the management made a plan to take out stock of cash valued document (CVDs) unauthorisedly from the CVD store of airline. The present workman referred herein above is said to receive a bundle of 100 blank manual double sector tickets which was taken out unauthorisedly by the co-employee Mr. P.K.Barthwal, Senior Account Assistant during the week of September 1999 from DVD Store Palam by dogging the other staffs on duty. The present workman alongwith Mr. D.K.Bathwal, Mr. D.K.Khardanda, approached Mr. F.G.Runda posted as booking office and requested him to validate aforesaid 100 stolen tickets by putting the impression of Bradma ticket validator of Safadarjung, Airport Booking office. Further in the intervening night of 10/11 October, 1999 the present workman and Mr. D.K.Kharbanda reached Safdarjung Office in the mid night when Mr. F.G.Runda was on duty. By avoiding the attention of the other Airline Staff on duty Mr. F.G.Runda took out unauthorisedly the Bradma ticket validator machine outside the booking office and all the 100 tickets were embossed by putting its impression. Thereafter claimant/workman unauthorisedly kept the said tickets to obtain refund from various Indian Airline offices, visited booking offices at Mumbai, Pune and Goa etc. with Mr. Sukhbir Singh Sangwan and Mr. D.K.Kharbanda and obtained refund unauthorisedly. Finding prima-facie the involvement of the present workman and other co-accused and co-delinquent employees (his colleagues) in the plan and conspiracy which being a serious act of misconduct he was suspended vide order dated 07.12.2000 and thereafter was issued a charge sheet vide memo dated 11.02.2000. An domestic enquiry was launched against him. The charge sheet is reproduced in the opening portion of this judgment. An interim reply dated 24.09.2003 was submitted by the workman with prayer to provide copy of the relevant document. He was provided the requisite documents then he submitted his reply on 04.08.2003. The reply was not found satisfactory therefore the competent authority of the management decided to hold an enquiry into the charges labelled against the workman. The enquiry was conducted jointly alongwith the other co-delinquent employees named above in the enquiry officer after taking on record evidences adduced before him concluded and submitted his report with finding that the workman is guilty of the charges labelled against him. Workman submitted his submission before the competent authority who considered the same and found no merit in his claim. Concurring with the finding of the enquiry officer a show cause notice was issued to the workman proposing imposing the punishment of dismissal from service of the company without terminal benefits. The workman replied the same also after the consideration of the reply the competent officer confirmed the punishment. Appeal when preferred by the workman against the punishment order against the order dated 13.07.2012 of the competent officer the same will be rejected. It is argued by the learned AR for the management that it is clear from the aforesaid sequence of the facts that the workman was dismissed from the services of the management company after conducting a valid and proper domestic enquiry in accordance with the principle of natural justice, equity, fair play and in accordance with the provisions of applicable standing order.

40. This would be relevant here to point out that above incident of taking out the bundle of 100 tickets, misusing his official position by the present claimant/workman and the other employee's and outsider's involvement with him in the conspiracy was taken cognizance by the Central Bureau of Investigation. An criminal case was lodged by it in the competent court. The claimant in his statement of claim while assailing the charge sheet issued to him in the domestic enquiry has pleaded that the charges labelled against him were identical with charges labelled by the CBI in criminal court vide FIR dated 24.05.2000. Further in the rejoinder to the written statement by the management the claimant has cited the statement of Dr. Sushil Gupta (MW30) who investigated the case on behalf of CBI in the capacity of Deputy SP, who deposed that, 'basically the case pertained to 100 tickets which were stolen from the log of 50 thousand tickets and the same were misutilised. In the course of the investigation it was found that all four charge sheeted employees namely Mr. P.K.Barthwal, Mr. Sanjay Kaura, Mr. F.G.Runda and Mr. Sukhbir Singh in conspiracy with each other alongwith two private persons Mr. D.K.Kharbanda and Mr. Brijesh Kumar had been instrumental in committing theft.

41. This would further be relevant to state that the aforesaid first information report lodged by the CBI and the criminal proceeding running in criminal court were never challenged in any court of law. Alleging them false and

fabricated against them. The statement of aforesaid management witness Dr. Sushil Gupta (MW30) is available in the record of enquiry proceeding and presented before this court also which form strong prima-facie evidence of to establish the fact of involvement of present claimant/workman of acting and misusing his official position while holding an office of trust. It is also prima-facie established that he involved himself in theft, misappropriation and breach of trust to make wrongful gain for himself. Admittedly the domestic enquiry proceeding was launched subsequent to the lodging of First Information Report by the CBI. This undoubtedly was sufficient to make reasonable apprehension in the binds of authorities of the management in regard to the trust worthiness of the present claimant/workman. As such the fact constituting the loss of confidence in the employer's (management) mind is pleaded and established by the management.

42. The aforesaid matter of criminal misconduct was subjected to domestic enquiry and ultimately the service of workman/claimant was terminated in punishment with no terminal benefits. This tribunal has vitiated the enquiry technically on the basis of non-observing the principles of natural justice and fair play, thereafter called upon the management to prove the charge of misconduct. The management in compliance of the order of the tribunal produced Mr. Tarun Mathur on 20.03.2022 to establish and prove the misconduct. Learned AR for the workman submitted that the management in its writ petition no. 8931/2022 and writ petition no. 8948/2022 before the Delhi High Court to impugn the order dated 16.02.2022 passed by the CGIT suppressed the vital fact that it has already complied with the direction of the tribunal to produce witness so as to prove misconduct. The management pleaded the ground why the further evidence as to misconduct of the workman/claimant is impossible to adduce because several witnesses examined during the enquiry might have superannuated from service or some of them might had died or settled outside Delhi. Further in criminal proceeding filed by the CBI which is still pending in Rohini District Court Delhi, most of the original of the documents relied upon by the management have been taken by the CBI for the purpose of criminal trial and therefore are not available with the management to prove the misconduct before the tribunal afresh. Accordingly, it would not be passable for the petitioner to prove the misconduct afresh against the workman/claimant after such a long time as most of the witness and document relied upon may not be available.

43. Learned AR for the workman/claimant argued that the plea of loss of confidence was taken for the first time in the Hon'ble High Court by the management on 03.07.2019 was therefore neither bona fide not legally permissible at all.

44. Sometime in case a employer is not able to prove a charge of misconduct against the workman, either because clear evidence is not available against him, or because the charges cannot be establish due to the sensitivities involve in the matter (for example cases involving sexual harassment). Such cases often involve situation where an employer is said to have lost the confidence in the worker, i.e. the employer no longer had the confidence to retain worker in employment. Learned A.R. for the workman/claimant in support of his argument with regard to the plea of loss of confidence which taken by the management, is not bonafide, has relied on the case of **Kanhiya Lal Agarwal V. Factory Manager (Supra)** in Para 12 the Apex Court led on conditions to be satisfied for concluding that the employer has validity lost confidence in the emerged viz.

1. Whether the worker is holding a post of trust and confidence
2. Whether by abusing such position the worker commit acts which result in forfeiting the same.
3. Whether to continue the worker in service would be embarrassing and inconvenient to the employer or it would be detrimental to the discipline or security of the establishment ?

The above stated all the issue aspects must be present to refuse reinstatement on the ground of loss of confidence. The fact of loss of confidence cannot be established based on the subjective opinion of the management. The important is that, the management should be in a position to prove objective fact that led to a different inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee.

45. In the preceding paras it is discussed that in the pleadings of the claimant the fact of his holding an office of trust and confidence is admitted this need not to be by evidence proved the by virtue of his bearing the office as Senior Accounts Officer in commercial division of the management establishment has being lawful custody and possession of the air tickets, is also admittedly proved from the nature of his official position he held. The second condition that the worker by abusing such position committed an act of taking out the air ticket unauthorisedly also to admission with regard to the CBI enquiry and investigation deemed to be nor denied specifically and shall amount in charges of theft of air tickets unauthorisedly validating them with the other colleagues and getting them cancelled for refund and making thereby wrongful gain for themselves with some other outsider like Traveling Agent, etc. The FIR, investigation and police report with charges labelled can this regard had not been challenged in any court of law. Thus, it is sufficient to prima-facie establish that workman committed an act in detriancnt to the establishment of this employment. A reasonable apprehension emerged in the minds of management authorities that their act would be detrimental to the discipline and security of the establishment also. Thus, the case law cited by the claimant/workman namely **Kanhaiya Lal Agarwal (Supra)** does not help him in any manner.

'Disciplinary Enquiry' necessity, effect of it's being vitiated.

46. The established legal principle is that the institution of a disciplinary enquiry against the workman though, may help the employer in establishing their bonafide before a court of law and assist them in proving the charges relating the loss of confidence made against the workman, however, there have also been cases where no disciplinary enquiry was carried out, yet the employer had been permitted to present fact before the court of law to help them prove that their decision to terminate the workman for loss of confidence was just and valid.

47. In the present case the management had instituted an enquiry in respect of the incident, to enquiry the Charges labelled against the workman alongwith some other colleagues and outsiders who committed the incident in the intervening night of 10/11 October 1999. The management with all bonafide tried to make a preliminary enquiry. Concurrently the CBI had also made investigation and labelled charges with regard to the theft, fraud, dishonesty and willful damage to the property of the management. The workman alongwith other colleagues was also issued charge sheet and when reply was not found satisfactory taken decision to hold enquiry into the charges. The delinquent employees were subjected to joint domestic enquiry therefore it ran from 22.08.2003 till 14.06.2006 and delay was caused by reason of the transfer of enquiry officers also. On resumption of charge by the new enquiry officer the proceeding moved ahead from 16.05.2007 and final submission of the report of the enquiry officer was forwarded to the workman and other delinquent employees in November 2008. Ultimately the enquiry officer found the workman guilty vide his report dated 14.09.2010. The delinquent workman moved representation which is considered by the competent authority who dismissed the same on 12.10.2010.

48. This court earlier had answered the issue No.1 and vide its award has vitiated the enquiry on the ground that the enquiry officer conducted the enquiry in violation of principle of natural justice, to the prejudice of the workman, as well in an unfair manner. Resultantly the termination order dated 13.07.2012 passed by the disciplinary authority cannot legally survive and sustain therefore held unfair and against the principal of natural justice. The tribunal further opined, an opportunity be granted to the management to adduce evidence on merit to charges as mentioned in the charge sheet. It clearly means that the enquiry was vitiated on the technical grounds.

49. The management witness produced before the tribunal on 30.03.2022 has stated on oath in his cross examination, "he is aware of the misconduct committed by the claimant who has misuse his official capacity and stolen air tickets of Air India unauthorisedly. Document in this aspect has already been placed on record and exhibited as MW1/2 to MW1/4. He further stated that it would be incorrect to suggest that these documents are no way relevant for the alleged misconduct against the claimant (workman). It is also wrong to suggest that having not been posted in the booking office he has no knowledge about the alleged incident and is deposing falsely". In fact, in preceding portion of this judgement, I had already discussed about the papers neither admitted nor denied by the claimant/workman when they were produced before the tribunal for recording admission or denial with regard to their genuineness. The claimant/workman or his authorised representative had not made such endorsement which might be willful and with ulterior motives. Therefore, the document produced by the management in support of their charges shall stand admitted by reason of their non denial. The original document relating to the culpable act of the claimant/workman in the incident are also with the knowledge of claimant/workman taken by the CBI in their custody and suggestion for submission before the criminal court in criminal case pending there with regard to the incident. The CBI's investigating officer in his statement had also stated the said fact as witness MW30 Dr. Sushil Gupta.

50. In ***K.L.Tirapathi V. State Bank of India and others. (1984 (1) SCC 43)*** on Para 29,33,34 this Hon'ble Court has held: -

*"29. We are of the opinion that Mr. Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr. Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. **So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries.** Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in "On Justice" by J. R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual*

phrase "audi alteram partem" which was first formulated by St. Augustine (*De Duabus Animabus*, XIV, 22, J. P. Migne, PL. 42, 110).

33. *The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.*

34. *The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the informations given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity or personal hearing. His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty. Indeed it may be mentioned that he was really consulted at every stage of preliminary investigation upon which the charges were based and upon which proposed action against him has been taken. In that view of the matter, we are of the opinion, that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because the evidence was not recorded in his presence or that the materials, the gist of which was communicated to him, were not gathered in his presence. As we have set out hereinbefore, indeed he had accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness of the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given explanation namely, he was over-worked, he had consulted his superiors and sought their guidance, his conduct has not actually, according to him caused any financial risk or damage to the Bank concerned. Therefore, in our opinion, in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation of the principles of natural justice. Had he, however, denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore."*

Standard of proof

51. In the departmental enquiry, the standard of proof required in a departmental order enquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court in the cases **Union Of India V/s Sardar Bahadur (1972 SLR SC 355); State of Andhra Pradesh V/s Shree Rama Rao (AIR 1963 SC 1723) and Nand Kishore Prasad V/s State of Bihar (1978 (2) SLR SC 46)**, has held:

"A disciplinarily proceeding is not a criminal trial and that standard of proof required in a disciplinarily enquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial".

52. The established and settled position of law is that the mode, extent and standard of proving the charge in domestic enquiry is quite different than that in the criminal proceeding. In the domestic enquiry the mode, extent and standard of proving the charge is only to show and established them by means of prima facie evidences, admission and absence of denial of particular fact. Whereas in criminal proceeding the prosecutor is heavily burdened to prove the charges by its own evidences beyond all reasonable doubts. In the present case there are sufficient prima facie evidences of the happening of incident of air tickets having been stolen misutilised for wrongful gain by the accused person. In the criminal case lodged by the CBI in criminal court their complicity is also investigated in the offence therefore they were labelled with charges under relevant sections of IPC. One of those accused is the present workman/claimant (Mr. Sanjay Kaura) whose claim is under consideration before this tribunal. There is no possibility to exhibit the original documents relating to offence as well to prove the misconduct with the help of them beyond all reasonable doubts in the domestic enquiry. Moreover, the prima facie evidences relating to offence unrebuttedly create an inference of culpability as well as complicity of the workman/claimant from whose custody and possession the tickets were taken out from the office of the management establishment. The incident is not denied, the criminal case

lodged by CBI in the court is also not denied. The complicity and involvement in that criminal case is also not challenged in any court of law to quash the same by the workman/claimant. It is also not denied that the workman/claimant Mr. Sanjay Kaura alongwith co-accused in the criminal case are labelled with relevant charges in the criminal court. As such non-compliance if any of the principle of natural justice are not shown by the claimant of nature that must cause some real prejudice to the delinquent workman. In absence of any denial as to the facts, above allegations having been not disputed by the delinquent workman shall be presumed to have happened, which may be treated sufficient to raise apprehension, suspicion as to the doubtful integrity and with regard to the character and honesty of the workman/claimant in the mind of management authorities. Moreover, the enquiry proceeding, though may have been conducted not at standard parameter of the principle of natural justice shall not be termed to be malafied or aimed to victimise the workman/claimant by termination of service. In loss of confidence is proved the defective enquiry or no enquiry at all may be an impediment for an employer is terminating the service of the delinquent employee.

53. In *Air India Corporation, Bombay V. Rebellow Air 1972 Supreme Court SC 1343*. The employer terminated an employee with immediate effect. When the matter brought before the Supreme Court, the employer submitted that it has lost confidence in the employee due to a great suspicion regarding the complainant's private conduct and behaviour with an Air Hostesses employed by the employer. It is pertinent to note that the employer had not carried out any disciplinary enquiry against the employee in question. The Supreme Court held them-

"Once bona-fide loss of confidence is formed, the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, its bona-fide is in over opinion final and not subject to review by the industrial adjudicator. Such opinion may legitimately in view the employer to terminate the employee's services; but such termination on more rational ground be considered to be misconduct and must therefore they held to be permissible and immune from challenge."

54. The management in compliance of the order of the Tribunal dated 16.02.2022 produced it's witness before the Tribunal namely Mr. Tarun Mathur (MW1) on 30.03.2022 who stated that in the year 1999 the claimant/workman was approached by Mr. F.G.Runda (Senior Account Assistant), Mr. D.K. Kharbanda (Travel Agent), Brijesh Kumar Gautam (Contractual Book Binder) at Safdarjung booking office and requested by them to validate 100 stolen tickets by putting the impression of Bradma ticket validator of Safdarjung booking office. Mr. F.G.Runda for assurance of monetary gain unauthorisedly took out the said Bradma ticket validator alongwith aforesaid persons during the intervening night of 10/11 October, 1999 from the Safdarjung booking office of the management Air Line. The further stated that Mr. Sanjay Kaura (the present workman), Mr. Sukhbir Singh Sangwan, Mr. Brijesh Kumar Gautam acted to get illegal monetary gain by cancelation and refund of stolen tickets. This witness when cross examined, stated that I was not present when the conversation between the claimant and other wrong doers happened, but I was posted during that period in my office in terminal one. It is fact that I do not have personal knowledge but know everything in official, capacity.

55. The workman in his statement of claim has admitted that he was working as Senior Account Assistant in financial department, Indira Gandhi International Airport, New Delhi at the time of his illegal, unjust, obituary and wrongful dismissal with effect from 13.07.2012. In the claim statement nowhere, he had stated about his place of posting during the incident in question in respect of which the charges are labelled upon him in the enquiry as well as in FIR lodged by CBI. However, he has admitted that the alleged incident took place in the year 1999. The claimant has not disclosed his place of posting during the period of incident in the year 1999, in the intervening night of 10/11 October on the other hand the management witness produced before the tribunal on 30.03.2022 to prove the misconduct committed by the claimant/workman, very clearly and unambiguously has stated that the workman Mr. F.G.Runda was approached by the other delinquent colleagues in the enquiry including the present claimant as well as co accused in the CBI case was approached at his work place Safdarjung booking office and requested by them to validate 100 stolen tickets by putting the impression of Bradma ticket validator of Safdarjung booking office. The witness MW1 Mr. Tarun Mathur is not cross examined by the claimant/workman on this statement. In his reply dated 04.08.2003 as against the show cause letter dated 21.07.2003 also he has not rebated his presence in official capacity at the place of incident. In the Indira Gandhi International Airport; booking office therefore his presence at the place of incident is strongly possible. However, the fact of complicity in the plan/conspiracy to commit the offence is subject to the proof in the criminal court on reliable evidences. So far as the incident and place of incidence as well as posting of the workman/claimant is concerned it stands admitted by the claimant himself for want of denial on his part. This was sufficient to create a reasonable apprehension as to the involvement of the claimant in the incident with the charge of which he is assigned in the domestic enquiry is prima-facie established which led to his termination from service. The claimant/workman thus is proved to have been terminated from service of the management by reason of loss of confidence in him. It is immaterial at this stage that the enquiry proceeding is vitiated by the tribunal.

56. The Apex Court in *Indian Airline V. Prabha G. Tanadan Air 2007 Supreme Court 548* has held that 'loss of confidence cannot be subjective but must be based on objective facts which would lead to definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved. Hon'ble Apex Court in the case of *State Bank of India and Another V. Bela Bagchi & Sons (AIR 2005 SC*

3272) held that 'even if from the misconduct of the employee the employer does not suffer any financial loss, then also he can be removed from service on the ground of loss of confidence.' It is further held by the Apex Court in *A.P.S.R.T.C. V. Raghuda Shiva Shankar Prasad, Air 2007 SC 152 that* - 'It is settled legal proposition that in a case of misconduct of grave nature like corruption, theft, no punishment other than the dismissal may be appropriate.

57. In the case of, *L. Michael & Another V. M/s Sons India Ltd. Air 1965 Supreme Court 661 (1975 S.C.R. (3) 489)*. The Apex Court held that 'Need less to say', the Apex Court recognised the power of the tribunal to go behind the form of the order, look at its substance and as such authorises to masquerade termination, if in reality it cloaked a dismissal for misconduct as a colourable exercise of power by the management.....On the facts of the *Air India case (Supra)* the court concluded that it was not possible to hold this order to be based on any conceivable misconduct. Special difference was made to the grave suspicions regarding the complainant's private conduct with Air Hostesses. Where no misconduct is firmed, the action and the delicate unstupidity for the job vis-a vis a young women in employment in the same firm is strongly suspected, resort to termination simply cannot be criticised as a malafide machination. In that background the action was held to be bonafide and the overall unsuitability laid to a loss of confidence in the employee. Not that the loss of confidence lagged exalted as a ground but the special circumstances of the case exalted by face in this charge simpliciter.

58. In the present case before this tribunal where the workman/claimant was dismissed from services in the background of criminal act like theft, misappropriation of stolen ticket, wrongful gain, fraud, breach of trust and conspiracy is bona fide and not to victimise the delinquent workman/claimant by his dismissal. There are sufficient materials in addition to the criminal prosecution against the workman/claimant, accomplice colleagues and other co accused to infer their complicity in the incident which reasonably led in domestic enquiry and to the punishment for misconduct. The management establishment has suffered loss not only monetary but to their credibility in out world with the regard to their services rendered to the public. Loss of confidence of the employer establishment emerged since the very inception, in the facts and circumstances of the case, which raised apprehension in the minds of employer that it would be embracing and detrimental to retain the workman/claimant anymore in the service of management establishment.

Reinstatement?

59. When this Tribunal has reached at finding that in the background of admitted and proved facts and circumstances, the action of management is bona fide and the overall unsuitability and unworthiness led to the loss of confidence in the workman/claimant, this tribunal does not find justification to order reinstatement of the workman in services of the management with all consequential benefit. However, in the Hon'ble High Court parties to this industrial dispute, through their learned counsel agreed to restrict the claim before the tribunal to the extent of compensation only. It is pertinent to note that when a workman is dismissed/terminated/discharged from services for misconduct resulting into the loss of confidence it would be important in consideration over the claim of reinstatement and compensation both. In the present case this tribunal has concluded that the termination of the workman resulted from his misconduct, consequently disinclines to order reinstatement. Even if a workman is cleared of charges relating to misconduct, if the matter involves loss of confidence the courts would be disinclined to order reinstatement.

Retrenchment compensation if may be granted ?

60. Whether termination due to loss of confidence amounts to retrenchment ?

- Before going into the discussion on the issues of compensation it shall be pertinent to reproduce the definition of Retrenchment as provided in section 2(oo) and the provision of retrenchment compensation in provision of section 25F of the Industrial Disputes Act, 1947 (in brief the I.D. Act).

2 (oo) "*retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) *voluntary retirement of the workman; or*

(b) *retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*

2*[(bb) *termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]*

(c) *termination of the service of a workman on the ground of continued ill-health;]*

"25F. *Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay² for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government³ or such authority as may be specified by the appropriate Government by notification in the Official Gazette]”.

- Obviously the aforesaid stated provision of I.D.Act excludes and excepted the case of terminations as punishment. Moreover the I.D.Act defines the term retrenchment in an expansive manner to mean termination by the employer of the service of workman for “any reason whatsoever”. The Apex Court in the case before it titled as **Hari Prasad Shiva Shankar Shukla V. A.D.Divakar (1951 (1) SCR 121)** ruled that “for any reason whatsoever”. Covers only instances involving discharge of surplus labour or staff by the employer, termination of work as for any other reason would not constitute retrenchment and consequently the provision of section 25 G and 25H does not apply. Accordingly a workman dismissed for loss of confidence would not be able to claim retrenchment compensation of light of reemployment under the employer in accordance with I.D. Act.

61. Further the workman whose act and conduct resulted into loss of confidence in him in the mind of employer is made the basis of termination of his services as punishment on 13.07.2013 is held valid, bona fide and just by this court. Therefore, he does not deserve to the compensation in terms of back wages and other allowances after that.

62. The claimant/workman in his claim statement and also in written argument has impressed upon the benefits of parity as the legal representatives of one of his co-delinquent late Sukhbir Singh Sangwan were granted compensation in terms of the money to the tune Rs.11,00,000/-, but the present claimant/workman instead of treated equally with similarly situated Sukhbir Singh Sangwan in the present matter is denied to grant compensation. The benefit of parity with the legal heir of co-delinquent late Sukhbir Singh Sangwan died in December 2009, before the conclusion of enquiry how may be granted to the present workman who is alive and punished with termination of his services on 13.07.2012. Sukhbir Singh Sangwan died before the conclusion of enquiry and was not inflicted with the punishment of termination of service till then. Here is no justification to give benefit of parity to the present workman with LR's of the deceased co-delinquent Sukhbir Singh Sangwan. The case law referred by the claimant/workman in **Ram Dev Singh V. Union of India (2009 (121) FLR 131)** (Delhi High Court) does not apply, as the facts, circumstances and issues involved are different in the present case.

63. Learned AR for the workman/claimant Sh.Inderjit Singh in the course of arguments relating to the issue of compensation impressed on the dilatory tactics adopted by the employer in the enquiry of the incident in issue. In the present matter the incident dated 10/11 October 1999, was enquired in very slow manner. The management issued charge sheet in the year 2003, in as much as more than 11 years were consumed in conclusion of the enquiry. Almost 15 years from the commission of the incident were elapsed in conclusion of the enquiry which ultimately culminated into the termination of services of the workman/claimant. It is also impressed that on bringing the dispute in the adjudicatory process before the industrial adjudicator by the claimant in the year 2014, the industrial dispute though promptly raised the management strategically dragged on the proceedings for almost further 9 years. The learned AR argued that the claimant/workman must be compensated in terms of money for the loss of time valuable for the life and livelihood of the claimant and his family member. Compensation must be given for the mental trauma and harassment. Learned AR for the management/opposite party strongly opposed the claim to the compensation on the ground of dilation of enquiry and a long period consumed in the industrial adjudication, as the present workman/claimant also contributed in dilation of the enquiry proceeding this way or that way on various grounds, because he knowing very well the nature of his misconduct was afraid of any possible adverse result in the enquiry.

64. After hearing the learned AR and on perusal of the enquiry proceeding, I found that sometime delay in enquiry proceeding occasioned due to change of enquiry officer in the course of proceeding. It had also been found that adjournments were sought by the delinquent workman also. Since domestic enquiry was being conducted and substituted by the department through the enquiry officer appointed in accordance with standing order. The expeditious disposal was in the hands of the enquiry officer who should not have proceeded the enquiry loosely granting repeated adjournment. In the aforesaid circumstance none of the parties to the enquiry proceeding deserved to be blamed for delaying tactics solely. Therefore, compensation on the ground of dilation of enquiry proceeding for a considerable long period as much as 13 years may not be granted by this tribunal on account of physical sufferance, mental trauma, embarrassment and harassment.

AWARD

Reasons and discussion made here in above the overall fact and circumstances are such that the termination of services of present workman/claimant Sanjay Kaura is legal and valid on the basis of loss of confidence. The claimant/workman is not entitled to be granted any relief either reinstatement with back wages to any extent or

compensation in terms of money in lieu thereof. The claim is hereby rejected. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA, (Retd.) Presiding Officer

Date: 31.05.2023

Vanshika Saini

नई दिल्ली, 16 अक्टूबर, 2023

का.आ. 1700.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सहायक अभियंता विद्युत उपमंडल क्रमांक 03, विद्युत उप प्रभाग क्रमांक 11 केंद्रीय लोक निर्माण विभाग, विद्युत भवन, नई दिल्ली; द्वारा -श्री राकेश शर्मा, (जे.ई.) और श्री संजय कुमार (A.E). सेवा केंद्र सीपीडब्ल्यूडी, पंडारा फ्लैट्स इंडिया गेट, पंडारा रोड, नई दिल्ली; निदेशक, श्री नरेंद्र कुमार मौर्य, श्री मनीष कुमार मौर्य और द्वारा - वरुण कुमार मौर्य. स्वास्तिक इलेक्ट्रोटेक प्रा. लिमिटेड, हाऊज़ खास, नई दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री ललित चौधरी, कामगार, द्वारा - भारतीय राष्ट्रीय प्रवासी श्रमिक संघ, कालकाजी, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 217/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.10.2023 को प्राप्त हुआ था।

[फा. सं. एल -42025-07-2023-200-आईआर(डीयू)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 16th October, 2023

S.O. 1700.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 217/2022) of the **Central Government Industrial Tribunal cum Labour Court - II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Assistant Engineer Electrical Sub Division No. 03, Electrical Sub Division No.11 Central Public Works Department, Vidyut Bhawan, New Delhi; Through Sh. Rakesh Sharma, (J.E) and Sh. Sanjay Kumar (A.E). Sewa Kendra CPWD., Pandara Flats India Gate, Pandara Road, New Delhi ; Through The Director, Shri Narendra Kumar Maurya, Shri Manish Kumar Maurya, & Sh. Varun Kumar Maurya. Swastik Electrotech Pvt. Ltd. , Hauz Khas, New Delhi, and Shri Lalit Chaudhary, ,Worker, Through-Indian National Migrant Worker's Union, Kalkaji, New Delhi**, which was received along with soft copy of the award by the Central Government on 13.10.2023.

[F. No. L-42025-07-2023-200-IR (DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT-II, NEW DELHI

ID.NO. 217/2022

Sh. Lalit Chaudhary, S/o Sh. Chakardhari Chaudhary,

R/o D-662, Chungi no. 03, Lal Kuan Badarpur, New Delhi-110044.

Through-Indian National Migrant Worker's Union,

1770/8, 3rd Floor, Govind Puri, Extn. Main Road Kalkaji,

New Delhi-110019.

.....Claimant / workman

Versus

1. Assistant Engineer Electrical Sub Division No. 03,
Electrical Sub Division No.11 Central Public Work Department,
Vidyut Bhawan, New Delhi-110001.
2. Sewa Kendra CPWD.
Pandara Flats India Gate, Pandara Road, New Delhi-110003.
Through Sh. Rakesh Sharma, (J.E) and Sh. Sanjay Kumar (A.E).
3. Swastik Electrotech Pvt. Ltd.
02/44-A/04, Kalu Sarai Hauz Khas, New Delhi-110016.
Through Their Director
Sh. Narender Kumar Maurya , Sh. Manish Kumar Maurya, & Sh. Varun Kumar Maurya.

.....Managements.

AWARD

This is an application filed u/s 2A of the Id. Act by the claimant wherein he has alleged illegal termination. Notice being served, the management appeared through it's A/R. When the matter was pending for written statement a proposal was advanced by the management no. 3 for amicable settlement. The Ld. A/R for the claimant gave a statement to the effect that the claimant has settled the dispute with the management no. 3 and does not want to pursue the case against the management no. 3. He has placed on record of the settlement entered into management no. 3 and the workman and proved the same as Exht. C-1.

In view of above facts on record a settlement award has been passed accordingly.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

ATUL KUMAR GARG, Presiding Officer

Dated 4th October, 2023.

नई दिल्ली, 17 अक्तूबर, 2023

का.आ. 1701.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राउरकेला स्टील प्लांट ऑफ़ सेल के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के प्रकाशित होने की तारीख से एक वर्ष की अवधि के लिए, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तन के अधीन था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस प्रयोजन के लिए इस निमित्त प्राधिकृत कोई अन्य पदधारी—
- (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरणी में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
- (ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन प्रसुविधाओं को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
- (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापन के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा—
- (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है ; या
- (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना; या
- (ङ) ऐसी अन्य शक्तियों का प्रयोग करना जो विनिर्दिष्ट किए जाँएँ।

6. विनिवेश या निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/11/2020-एस.एस-1]

धीरेन्द्र मोहन खरे, अवर सचिव

New Delhi, the 17th October, 2023

S.O. 1701.—In exercise of the powers conferred by section 88 read with section 91A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Rourkela Steel Plant of SAIL** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —
 - (a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such Social Security Officer or other official and allow him to examine the accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine, with respect to any matter relevant to the purposes aforesaid the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said Social Security Officer or other official has reasonable cause to believe to be or to have been an employee ; or
 - (d) make copies of or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.
- (6) In case of disinvestment or corporatisation, the exemption granted shall stand cancelled and the new entity may apply to the appropriate Government for exemption.

[No. S-38014/11/2020-SS-I]

DHEERENDRA MOHAN KHARE, Under Secy.

नई दिल्ली, 18 अक्टूबर, 2023

का.आ. 1702.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स किंग सिक्योरिटी गार्ड्स सर्विसेज प्राइवेट लिमिटेड, मोहम्मदपुर, नई दिल्ली; सचिव, केंद्रीय माध्यमिक शिक्षा बोर्ड, (सीबीएसई), प्रीत विहार, दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री सुनील कुमार और 3 अन्य, द्वारा-समाजवादी कर्मचारी संघ (पंजीकृत) द्वारा- जगतपुरी मंडोलिन रोड, दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 179/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/124/2022-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2023

S.O. 1702.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 179/2022) of the **Central Government Industrial Tribunal cum Labour Court - I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s King Security Guards Services Pvt.Ltd, Mohammadpur, New Delhi ; The Secretary, Central Board of Secondary Education, (CBSE), Preet Vihar, Delhi, and Shri Sunil Kumar and 3 others, through- Samajwadi Karmchari Sangh (Registered), Jagatpuri Mandolin Road, Delhi, which was received along with soft copy of the award by the Central Government on 18.10.2023.

[No. L-42011/124/2022-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT-I, NEW DELHI

ID.NO. 179/2022

Sh. Sunil Kumar & 3 others

By Samajwadi Karmchari Union (Regd.)

D-212, Gali No. 10, Jagatpuri Mandolin Road, Delhi-110093.

.....Workman

Versus

1. M/s King Security Guards Services Pvt.Ltd,
39-A/102, Near Ram Mandir, Vill-Mohammadpur, New Delhi-110066.
2. Secretary,
Central Board of Secondary Education,
Shiksha Kendra, #2, Community Centre,
Preet Vihar, Delhi-110092.

.....Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. L-42011/214/2022-IR.(DU) of dated 30.05.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

“Whether Samajwadi Karmchari Union (Reg.) has locus standi to raise industrial dispute under ID Act, 1947 i.r.o. Shri Sunil Kumar and 3 others vide letter dated 11-01-2021 against the management of M/s. King Security Guards Services Pvt. Ltd., New Delhi (contractor) under Central Board of Secondary Education, Delhi. ?”

If yes, whether the demand raised by Shri Sunil Kumar and 3 others vide letter dated 11-01-2021 through Samajwadi Karmchari Union (Regd.) to the management of M/s. King Security Guards Services Pvt. Ltd., New Delhi (contractor) under Central Board of Secondary Education, Delhi for reinstatement with all consequential benefits including full back wages and payment of Bonus for the year 2017-18 and 2018-19, is proper, legal and justified ? If yes to what relief the disputant workers entitled and what directions are necessary in the matter?

In the reference ordre, the appropriate Government commanded the parties raising the dispute the file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposit parties involved in the dispute, Despite directions so given, claimant opted not to file the claim statement.

On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA, (Retd.) Presiding Officer

Date: 23rd August, 2023

नई दिल्ली, 18 अक्टूबर, 2023

का.आ. 1703.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स किंग सिक्योरिटी गार्ड्स सर्विसेज प्राइवेट लिमिटेड, मोहम्मदपुर, नई दिल्ली; सचिव, केंद्रीय माध्यमिक शिक्षा बोर्ड, (सीबीएसई), प्रीत विहार, दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री मातबर सिंह, कामगार, द्वारा-समाजवादी कर्मचारी संघ (पंजीकृत) द्वारा- जगतपुरी मँडोलिन रोड, दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 222/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.10.2023 को प्राप्त हुआ था।

[सं. एल-42011/122/2022-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2023

S.O. 1703.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 222/2022) of the **Central Government Industrial Tribunal cum Labour Court - I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s King Security Guards Services Pvt.Ltd, Mohammadpur, New Delhi ; The Secretary, Central Board of Secondary Education, (CBSE), Preet Vihar, Delhi, and Shri Matbar Singh, Worker, through- Samajwadi Karmchari Sangh (Registered), Jagatpuri Mandolin Road, Delhi, which was received along with soft copy of the award by the Central Government on 18.10.2023.

[No. L-42011/122/2022-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT-I, NEW DELHI****ID.NO. 222/2022**

Sh. Matbar Singh S/o Sh. Kanwar Singh,
Samajwadi Karamchari Union (Regd),
D-212, Gali No. 10, Jagatpuri Mandoli Road,
Delhi-110093.

.....Workman

Versus

1. M/s King Security Guards Services Pvt.Ltd,
39-A/102, Near Ram Mandir, Vill-Mohammadpur, New Delhi-110066.
2. The Secretary,
Central Board of Secondary Education,
Shiksha Kendra, #2, Community Centre,
Preet Vihar, Delhi-110092.

.....Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. L-42011/122/2022-IR.(DU) of dated 30.05.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

“Whether Samajwadi Karmchari Union (Reg.) has locus standi to raise industrial dispute under ID Act, 1947 i.r.o. Shri Matbar Singh vide letter dated 11.01.2021 against the management of M/s. King Security Guards Services Pvt. Ltd, New Delhi (contractor under Central Board of Secondary Education, Delhi)?”

If yes, whether the demand raised by Shri Matbar Singh vide letter dated 11.01.2021 through Samajwadi Karmchari Union (Reg.) to the management of M/s King Security Guards Services Pvt. Ltd, New Delhi (contractor) under Central Board of Education, Delhi for reinstatement with continuity of service alongwith all consequential benefits including full back wages and payment of bonus for the year 2017-18 and 2018-19, is proper, legal and justified? If yes, to what relief the disputant workers entitled and what directions are necessary in the matter?

In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement.

On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA, (Retd.) Presiding Officer

Date: 23rd August, 2023

नई दिल्ली, 18 अक्टूबर, 2023

का.आ. 1704.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षक, भारतीय डाक स्वचालित अनुसंधान केंद्र, एएमपीसी बिल्डिंग, आईजीआई हवाई अड्डा, महिपालपुर के पास, दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री जॉनसन दीपक, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 233/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.10.2023 को प्राप्त हुआ था।

[सं. एल-40012/16/2017-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2023

S.O. 1704.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 233/2018) of the **Central Government Industrial Tribunal cum Labour Court - I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintendent, Indian Post Automatic Research Centre, AMPC Building, IGI Airport, Near Mahipalpur, Delhi, and Shri Johnsan Deepak, Worker**, which was received along with soft copy of the award by the Central Government on 18.10.2023.

[No. L-40012/16/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI – 1 NEW DELHI.

Present : **Justice Vikas Kunvar Srivastava (Retd.)**
(Presiding officer)
CGIT, Delhi-1

ID No.233/2018

Sh. Johnsan Deepak
530, Arjun Camp
Near Mahipal Pur,
New Delhi-110037

Workman...

Versus

The Superintendent,
Indian Post Automatic Research Centre,
AMPC Building, IGI Airport,
Near Mahipal Pur,
Delhi – 110037

Management...

None for the claimant

Sh. Atul Bharadwaj, A/R for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. L-40012/16/2017-IR(DU) dated 20.08.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

“Whether the action of Indian Post Automatic Research Centre in terminating Sh. Johnson Deepak who was working as housekeeping, daily wager workman from 01.04.2012 till his alleged illegal termination on 02.06.2015, is fair, just & legal? If not, to what benefits the workman is entitled to?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA, (Retd.) Presiding Officer

Date: 11.04.2023

शुद्धिपत्र

नई दिल्ली, 18 अक्टूबर, 2023

का.आ. 1705.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (28/2009) प्रकाशित करती है।

[सं. एल-12011/37/2009- आई आर (बी-II)]

सलोनी, उप निदेशक

CORRIGENDUM

New Delhi, the 18th October, 2023

S.O. 1705.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.28/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen.

[No. L-12011/37/2009- IR(B-II)]

SALONI, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD****Present: -Sri IRFAN QAMAR****Presiding Officer**Dated the 23rd day of March, 2023**INDUSTRIAL DISPUTE No. 28/2009**

Between:

Sri K.N. Patnaik,

Bank of India Staff Union (A.P.)

C/o Bank of India,

Visakhapatnam Main Branch,

Dwarakanagar,

Visakhapatnam – 530016.

..... Petitioner

AND

The Sub-Divisional Officer,

Telecom,

Mahaboobabad,

Warangal District-506 101.

.... Respondent

CORRIGENDUM

The award was passed on 23.3.2023 and was published in the official gazette vide notification File No. L-12011/37/2009-IR(B.II) dated 10.5.2023.

Upon receipt of notification, it is found that the address of the Respondent appearing in the cause title of the award was wrongly typed as,

“The Sub-Divisional Officer,

Telecom,

Mahaboobabad,

Warangal District-506 101.”

It is a typographical error which needs immediate correction. Accordingly, it is corrected as under:

“The Zonal Manager,

Bank of India,

Visakhapatnam Zone, Opp. Lions Club,

Kishan Bhavan,

Visakhapatnam.(A.P.) – 530 002.”

IRFAN QAMAR, Presiding Officer